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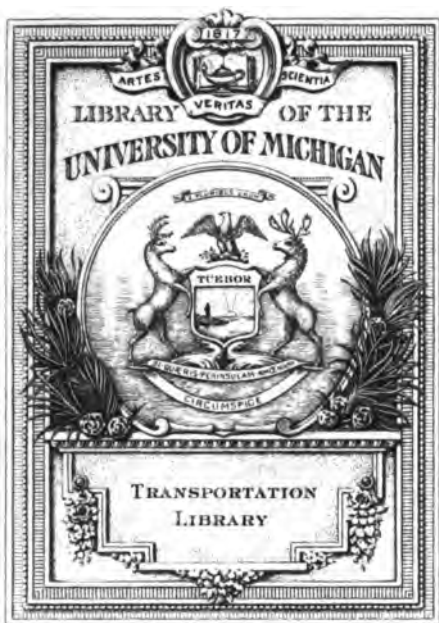
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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME XXVIII

U.S. DECISIONS OF THE  
INTERSTATE COMMERCE COMMISSION  
OF THE UNITED STATES

JUNE, 1913, TO JANUARY, 1914

REPORTED BY THE COMMISSION



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86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

# CONTENTS

	Page.
Table of cases reported .....	v
Table of cases cited .....	xv
Members of the Commission .....	xxi
Proceedings on the death of Mr. Marble .....	xxiii
Opinions of the Commission .....	1
Cases disposed of without printed report .....	711
Reparation cases disposed of in unreported opinions .....	723
Table of memorandum and unreported cases .....	743
Supplemental reparation orders .....	759
Informal reparation claims .....	763
Table of commodities .....	765
Table of localities .....	773
Index .....	791

28 I. C. O.

III

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## TABLE OF CASES REPORTED.

	Page.
Acme Portland Cement Co. v. American Express Co.....	316
Adams Express Co., Memphis Freight Bureau v.....	131
Ahnapee & Western Ry. Co., Patent Vulcanite Roofing Co. v.....	610
Alabama Great Southern R. R. Co., Meridian Board of Trade & Cotton Exchange v.....	360
Alleged Unreasonable Rates on Live Stock.....	332
Alton Board of Trade v. C. & A. R. R. Co.....	589
American Agricultural Chemical Co. v. B. & A. R. R. Co....	398
American Brake Shoe & Foundry Co. v. B. Ry. Co. of Chat- tanooga.....	350
American Express Co., Acme Portland Cement Co. v.....	316
American Express Co., Atlantic Packing Co. of Baltimore City v.....	244
American Express Co., Sundberg v.....	131
Arizona Corporation Commission v. A. T. & S. F. Ry. Co.....	428
Arizona Eastern R. R. Co., Iowa Board of R. R. Com'rs. v... 193,	563
Atchison, Topeka & Santa Fe Ry. Co., Arizona Corpora- tion Commission v.....	428
Atchison, Topeka & Santa Fe Ry. Co., Boston Chamber of Commerce v.....	230
Atchison, Topeka & Santa Fe Ry. Co., Colorado Mfrs.' Asso. v..	82
Atchison, Topeka & Santa Fe Ry. Co., Corporation Commission of Oklahoma v.....	332
Atchison, Topeka & Santa Fe Ry. Co., Fairmont Creamery Co. v.....	661
Atchison, Topeka & Santa Fe Ry. Co., German Kali Works, Inc. v.....	228
Atchison, Topeka & Santa Fe Ry. Co., Klauer Mfg. Co. v....	508
Atchison, Topeka & Santa Fe Ry. Co., Minneapolis Brewing Co. v.....	688
Atchison, Topeka & Santa Fe Ry. Co., Omaha Grain Ex- change v.....	664
Atchison, Topeka & Santa Fe Ry. Co., Schmidt & Peters Inc. v.....	376
Atchison, Topeka & Santa Fe Ry. Co., State of Iowa v.....	47

	Page.
Atchison, Topeka & Santa Fe Ry. Co., Traffic Bureau of the Sioux City Commercial Club <i>v.</i> .....	82
Atchison, Topeka & Santa Fe Ry. Co., Volco Mfg. Co. <i>v.</i> .....	289
Atchison, Topeka & Santa Fe Ry. Co., Wheeler & Motter Mercantile Co. <i>v.</i> .....	205
Atlanta & West Point R. R. Co., Lagrange Chamber of Com- merce <i>v.</i> .....	178
Atlanta, Birmingham & Atlantic R. R. Co., Mayor & Council of Douglas, Ga. <i>v.</i> .....	445
Atlanta Journal Co. <i>v.</i> S. A. L. Ry. ....	186
Atlantic Coast Line R. R. Co., Boney & Harper Milling Co. <i>v.</i> .....	383
Atlantic Coast Line R. R. Co., City of Camilla, Ga. <i>v.</i> .....	433
Atlantic Coast Line R. R. Co., City of Sylvester, Ga. <i>v.</i> .....	433
Atlantic Coast Line R. R. Co., Ludowici-Celadon Co. <i>v.</i> .....	693
Atlantic Coast Line R. R. Co., R. R. Com'rs. of Florida <i>v.</i> ....	356
Atlantic Coast Line R. R. Co., Town of Pelham, Ga. <i>v.</i> .....	433
Atlantic Packing Co. of Baltimore City <i>v.</i> American Express Co. ....	244
Baltimore & Ohio R. R. Co., Memphis Freight Bureau <i>v.</i> ....	543
Baltimore & Ohio R. R. Co., National Coal Co. <i>v.</i> .....	442
Bangor & Aroostook R. R. Co., American Agricultural Chemi- cal Co. <i>v.</i> .....	398
Becker <i>v.</i> P. M. R. R. Co. ....	645
Belt Ry. Co. of Chattanooga, American Brake Shoe & Foundry Co. <i>v.</i> .....	350
Benjamin Coal Co. <i>v.</i> P. M. R. R. Co. ....	645
Birge-Forbes Co. <i>v.</i> M. K. & T. Ry. Co. ....	409
Board of R. R. Com'rs. of the State of Iowa <i>v.</i> A. E. R. R. Co. 193,	563
Board of Trade & Cotton Exchange of Meridian <i>v.</i> A. G. S. R. R. Co. ....	360
Board of Trade of Alton <i>v.</i> C. & A. R. R. Co. ....	589
Board of Trade of Carnegie <i>v.</i> P. Co. ....	122
Board of Trade of Carrollton, Ga. <i>v.</i> C. of G. Ry. Co. ....	154
Boney & Harper Milling Co. <i>v.</i> A. C. L. R. R. Co. ....	383
Boston & Albany R. R. Co., Haverhill Box Board Co. <i>v.</i> ....	336
Boston & Maine R. R., Elgin Commercial Club <i>v.</i> .....	380
Boston Chamber of Commerce <i>v.</i> A. T. & S. F. Ry. Co. ....	230
Bricks from Kansas to Iowa. ....	285
Bricks from Ohio to Huntington, W. Va. ....	292
Brooms to Colorado. ....	310
Bruce & West Mfg. Co. <i>v.</i> E. R. R. Co. ....	38
Bryant Co. <i>v.</i> F. W. & D. C. Ry. Co. ....	594
Buffalo, Rochester & Pittsburgh Ry. Co., Morton Salt Co. <i>v.</i> ...	38
Building Stone. ....	269

	Page.
Butter & Cheese.....	330
California Commercial Asso. v. Wells Fargo & Co.....	131
California-Nevada Lumber Rates.....	313
Callaway Fuel Co. v. P. M. R. R. Co.....	645
Calcoosahatchee River Steamboat Line, R. R. Com'rs. of Florida v.....	356
Camilla, Ga., City of v. A. C. L. R. R. Co.....	433
Cancellation of Kansas City & Memphis Ry. Co. Rates.....	640
Carnegie Board of Trade v. P. Co.....	122
Carrollton, Ga., Board of Trade of v. C. of G. Ry. Co.....	154
Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.....	76
Cement Rates between Iowa and Minnesota.....	477
Central of Georgia Ry. Co., Board of Trade of Carrollton, Ga. v.....	154
Central of Georgia Ry. Co., Constitution Publishing Co. v.....	186
Central of Georgia Ry. Co., City of Montezuma, Ga. v.....	280
Chamber of Commerce of Boston v. A. T. & S. F. Ry. Co.....	230
Chamber of Commerce of Columbia, S. C. v. S. Ry. Co.....	339
Chamber of Commerce of Lagrange v. A. & W. P. R. R. Co..	178
Chamber of Commerce of Sheridan v. C. B. & Q. R. R. Co..	250
Chicago & Alton R. R. Co., Alton Board of Trade v.....	589
Chicago & Northwestern Ry. Co., Clinton Sugar Refining Co. v.....	364
Chicago & Northwestern Ry. Co., Minneapolis Cereal Co. v..	415
Chicago & Northwestern Ry. Co., National Syrup Co. v.....	673
Chicago & Northwestern Ry. Co., United Refrigerator & Ice Machine Co. v.....	439
Chicago & Northwestern Ry. Co., Wausau Advancement Asso. v.....	459
Chicago, Burlington & Quincy R. R. Co., Hicks-Fuller-Pierson Co. v.....	205
Chicago, Burlington & Quincy R. R. Co., Sheridan Chamber of Commerce v.....	250
Chicago, Burlington & Quincy R. R. Co., Smith & Co. v.....	205
Chicago Great Western R. R. Co., Fort Dodge Shippers Asso. v..	76
Chicago Great Western R. R. Co., Marshall Oil Co. of Iowa v..	707
Chicago Lighterage Charges.....	390
Chicago, Milwaukee & Puget Sound Ry. Co., Northwestern Woodenware Co. v.....	237
Chicago, Milwaukee & St. Paul Ry. Co., Ohio Iron & Metal Co. v.....	703
Chicago, Rock Island & Pacific Ry. Co., Cedar Rapids Commercial Club v.....	76

	Page.
Chicago, Rock Island & Pacific Ry. Co., New England Electric Co. v.....	418
Chicago, Rock Island & Pacific Ry. Co., Omaha Grain Exchange v.....	680
Chicago, Rock Island & Pacific Ry. Co., Scott-Mayer Commission Co. v.....	529
Chicago, St. Paul, Minneapolis & Omaha Ry. Co., State of Iowa v.....	64; 76
Chicago Switching Charges.....	677
City of Camilla, Ga. v. A. C. L. R. R. Co.....	433
City of Montezuma, Ga., v. C. of G. Ry. Co.....	280
City of Sylvester, Ga., v. A. C. L. R. R. Co.....	433
Class & Commodity Rates.....	1
Classification of Iron and Steel Window Frames and Sash.....	500
Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.....	364
Coal Rates from the Anthracite Region to Points on the New Haven Railroad.....	235
Coal Rates to Milwaukee and other Wisconsin Points.....	527
Coal Rates from Points in New Mexico.....	328
Coffee Importers of St. Louis Traffic Asso. v. I. C. R. R. Co..	484
Colorado & Southeastern R. R. Co., Huerfano Coal Co. v.....	502
Colorado Broom Rates.....	310
Colorado Mfrs'. Asso. v. A. T. & S. F. Ry. Co.....	82
Columbia Chamber of Commerce v. S. Ry. Co.....	339
Commercial Asso. of California v. Wells Fargo & Co.....	131
Commercial Asso. of Springfield, Ill., v. P. R. R. Co.....	511
Commercial Club of Cedar Rapids v. C. R. I. & P. Ry. Co.....	76
Commercial Club of Elgin, Ill., v. B. & M. R. R.....	380
Commercial Club of Lebanon v. L. & N. R. R. Co.....	301
Commodity Rates between Missouri River Points.....	265
Constitution Publishing Co. v. C. of G. Ry. Co.....	186
Corporation Commission of Arizona v. A. T. & S. F. Ry. Co..	428
Corporation Commission of Oklahoma v. A. T. & S. F. Ry. Co..	332
Cottonseed and its Products.....	219
Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.....	274
Dairymen's Supply Co. v. P. R. R. Co.....	406
Detroit Switching Charges.....	494
Dillon Coal & Transfer Co. v. O. S. L. R. R. Co.....	91
Douglas, Ga., Mayor & Council of, v. A. B. & A. R. R. Co.....	445
East Dubuque Supply Co. v. I. C. R. R. Co.....	425
Eichenberg v. S. P. Co.....	584
Elgin Commercial Club v. B. & M. R. R.....	380
Erie R. R. Co., Bruce & West Mfg. Co. v.....	38
Express Rates, Practices, Accounts and Revenues.....	131

	Page
Fairmont Creamery Co. v. A. T. & S. F. Ry. Co.....	661
Florida East Coast Ry. Co., Crutchfield, Woolfolk & Clore v..	274
Florida R. R. Com'rs. v. A. C. L. R. R. Co.....	356
Florida R. R. Com'rs. v. Southern Express Co.....	634
Fort Dodge Shippers Asso. v. C. G. W. R. R. Co.....	76
Fort Worth & Denver City Ry. Co., Bryant Co. v.....	594
Fourth Section Applications Nos. 774 and 5301.....	235
Fourth Section Application No. 1625; 1952.....	608; 589
Freight Bureau of Memphis v. Adams Express Co.....	131
Freight Bureau of Memphis v. B. & O. R. R. Co.....	543
Freight Bureau of Texarkana v. St. L. I. M. & S. Ry. Co.....	569
Fresh Meats from Omaha to Oklahoma.....	454
Genesee & Wyoming R. R. Co., Gottron Bros. Co. v.....	38
George & Co. v. F. E. C. Ry. Co.....	274
Georgia Southern & Florida Ry. Co., Mayor & Council of Vienna, Ga., v.....	173
Georgian Co. v. C. of G. Ry. Co.....	186
German Kali Works, Inc., v. A. T. & S. F. Ry. Co.....	223
Gottron Bros. Co. v. G. & W. R. R. Co.....	38
Grain Rates in C. F. A. Territory.....	549
Grain Rates from Iowa.....	354
Grain rates from Oklahoma.....	462
Grain rates from Omaha to Wisconsin.....	602
Grand Trunk Western Ry. Co., Milwaukee Maltsters' Traffic Asso. v.....	489
Great Northern Express Co., Sundberg v.....	131
Havenhill Box Board Co. v. B. & A. R. R. Co.....	336
Hicks-Fuller-Pierson Co. v. C. B. & Q. R. R. Co.....	205
Huerfano Coal Co. v. C. & S. E. R. R. Co.....	502
Hull Vehicle Co. v. S. Ry. Co.....	619
Illinois Central R. R. Co., East Dubuque Supply Co. v.....	425
Illinois Central R. R. Co., Lee Co. v.....	515
Illinois Central R. R. Co., Traffic Asso. of St. Louis Coffee Importers v.....	484
In re Advances:	
Bricks from Kansas to Iowa.....	285
Bricks from Ohio to Huntington, W. Va.....	292
Broom Rates to Colorado.....	310
Building Stone.....	269
Butter and Cheese.....	330
California-Nevada Lumber Rates.....	313
Cement from Iowa to Minnesota.....	477
Chicago Lighterage Charges.....	390
Chicago Switching Charges.....	677



## In re Advances—Continued.

	Page.
Class & Commodity Rates .....	1
Coal to Milwaukee and other Wisconsin Points .....	527
Coal from New Mexico .....	328
Commodity Rates between Missouri River Points .....	265
Cottonseed and its Products .....	219
Detroit Switching Charges .....	494
Fresh Meats from Omaha to Oklahoma Points .....	454
Grain Rates in C. F. A. Territory .....	549
Grain Rates from Iowa .....	354
Grain Rates from Oklahoma .....	462
Grain Rates from Omaha to Wisconsin .....	602
Iowa Grain Rates .....	354
Iowa-Minnesota Cement Rates .....	477
Kansas-Iowa Brick Rates .....	285
Lighterage charges at Chicago .....	390
Lumber Rates from California to Nevada .....	313
Lumber Rates from Texas, Louisiana and Arkansas to Oklahoma and Missouri .....	471
Malt .....	549
Manitowoc-Milwaukee-Kaukauna Paper Rates .....	305
Massachusetts-Maine Wool Rates .....	396
Missouri River Building Stone Rates .....	269
Molasses from Mobile, Ala. ....	666
New Mexico Coal Rates .....	328
New York Butter and Cheese Rates .....	330
Oklahoma-Colorado Potato Rates .....	298
Oklahoma Grain Rates .....	462
Omaha-Oklahoma Fresh-Meat Rates .....	454
Omaha-Wisconsin Grain Rates .....	602
Packing-House Products to, and from Arkansas, Louisi- ana and Oklahoma .....	599
Paper .....	305
Potatoes .....	298
Proportional Rates .....	549
Refrigeration of Fruits and Vegetables .....	326
Scrap Iron Rates between Chicago and other Points, and Racine, Milwaukee, Wis., and other Points .....	525
Scrap Iron Rates between Duluth, Minn., and Chicago, Ill., and other Points .....	467
Soda Ash, etc. ....	613
Storage Charges .....	605
Storage Charges in C. F. A. Territory .....	372
Storage Rules and Regulations at New Orleans, La. ....	605

## In re Advances—Continued.

	Page.
Switching Charges at Chicago .....	677
Switching Charges at Detroit .....	494
Tin Cans and other Commodities .....	247
Transcontinental Rates from Group F .....	1
Wool .....	396

## In re:

Alleged Unreasonable Rates on Live Stock .....	332
Cancellation of Kansas City & Memphis Ry. Co. Rates ..	640
Classification of Iron and Steel Window Frames and Sash ..	500
Coal Rates from the Anthracite Region to Points on the New Haven Railroad .....	235
Express Rates, Practices, Accounts and Revenues .....	131
Fourth Section Application No. 1625; 1952 .....	608; 589
Fourth Section Applications Nos. 774 and 5301 .....	285
Irregularities in the Weighing of Freight .....	7
Issuance, Sale and Exchange of Mileage Books .....	318
Kansas City & Memphis Ry. Co. Rate Cancellation .....	640
Live Stock, Packing-House Products and Fresh Meats ..	332
Mileage Books .....	318
Weighing of Freight by Carriers Subject to the Act .....	7
Interior Iowa Cities Case .....	64

Iowa Grain Rates .....	354
Iowa-Minnesota Cement Rates .....	477
Iowa, State Board of R. R. Com'rs. v. A. E. R. R. Co. ....	193; 563
Iowa, State of v. A. T. & S. F. Ry. Co. ....	47
Iowa, State of v. C. St. P. M. & O. Ry. Co. ....	64; 76
Iowa, State of v. N. Y. C. & H. R. R. R. Co. ....	64
Iron and Steel Window Frames and Sash .....	501
Irregularities in the Weighing of Freight .....	7
Issuance, Sale and Exchange of Mileage Books .....	318
Kansas City & Memphis Ry. Co. Rate Cancellation .....	640
Kansas-Iowa Brick Rates .....	285
Keats Auto Co. v. O. W. R. R. & Nav. Co. ....	412
Klauer Mfg. Co. v. A. T. & S. F. Ry. Co. ....	508
Kohlberg & Co. v. Wells, Fargo & Co. ....	131
Lagrange Chamber of Commerce v. A. & W. P. R. R. Co. ....	178
Lebanon Commercial Club v. L. & N. R. R. Co. ....	301
Lee Co. v. I. C. R. R. Co. ....	515
Lighterage Charges at Chicago .....	390
Live Stock, Packing-House Products and Fresh Meats .....	332
Louisville & Nashville R. R. Co., Lebanon Commercial Club v. ....	301
Louisville & Nashville R. R. Co., Traffic Bureau of Nashville v. ....	533
Ludowici-Celadon Co. v. A. C. L. R. R. Co. ....	693

	Page.
Lumber Rates from California to Nevada .....	313
Lumber Rates in the Southwest .....	471
Malt .....	549
Maltsters' Traffic Asso. of Milwaukee v. G. T. W. Ry. Co. ....	489
Manitowoc-Milwaukee-Kaukana Paper Rates .....	305
Manufacturers' Asso. of Colorado v. A. T. & S. F. Ry. Co. ....	82
Manufacturers Railway Co. v. St. L. I. M. & S. Ry. Co. ....	93
Marshall Oil Co. of Iowa v. C. G. W. R. R. Co. ....	707
Mason Bros. v. S. P. Co. ....	402
Massachusetts-Maine Wool Rates .....	396
Mayor & City Council of Vienna, Ga. v. G. S. & F. Ry. Co. ....	173
Mayor & Council of Douglas, Ga. v. A. B. & A. R. R. Co. ....	445
Memphis Freight Bureau v. Adams Express Co. ....	131
Memphis Freight Bureau v. B. & O. R. R. Co. ....	543
Menzies-DuBois Auto Co. v. O. W. R. R. & Nav. Co. ....	412
Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co. ....	701
Meridian Board of Trade & Cotton Exchange v. A. G. S. R. R. Co. ....	360
Mileage Books .....	318
Milwaukee Malsters' Traffic Asso. v. G. T. W. Ry. Co. ....	489
Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co. ....	688
Minneapolis Cereal Co. v. C. & N. W. Ry. Co. ....	415
Mississippi River Case, The .....	47
Missouri, Kansas & Texas Ry. Co., Birge-Forbes Co. v. ....	409
Missouri Pacific Ry. Co., Taylor Dry Goods Co. v. ....	205; 308
Missouri River Building Stone Rates .....	269
Molasses from Mobile, Ala. ....	666
Montezuma, Ga., City of v. C. of G. Ry. Co. ....	280
Morgan's Louisiana & Texas R. R. & S. S. Co., Morton Salt Co. v. ....	422
Morton Salt Co. v. B. R. & P. Ry. Co. ....	38
Morton Salt Co. v. M. L. & T. R. R. & S. S. Co. ....	422
Nashville, Chattanooga & St. Louis Ry., American Brake Shoe & Foundry Co. v. ....	350
Nashville Traffic Bureau v. L. & N. R. R. Co. ....	533
National Coal Co. v. B. & O. R. R. Co. ....	442
National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co. ....	215
National Mfg. Co. (now National Syrup Co.) v. C. & N. W. Ry. Co. ....	673
National Syrup Co. v. C. & N. W. Ry. Co. ....	673
New England Electric Co. v. C. R. I. & P. Ry. Co. ....	418
New Mexico Coal Rates .....	328
New Orleans, La., Storage Rules and Regulations .....	605
New York Butter and Cheese Rates .....	330

	Page.
New York Central & Hudson River R. R. Co., State of Iowa v.	64
Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co.	237
Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co.	703
Oklahoma-Colorado Potato Rates	298
Oklahoma Corporation Commission v. A. T. & S. F. Ry. Co.	332
Oklahoma Grain Rates	462
Omaha Grain Exchange v. A. T. & S. F. Ry. Co.	664
Omaha Grain Exchange v. C. R. I. & P. Ry. Co.	680
Omaha-Oklahoma Fresh-Meat Rates	454
Omaha-Wisconsin Grain Rates	602
Oregon Short Line R. R. Co., Dillon Coal & Transfer Co. v.	91
Oregon-Washington R. R. & Navigation Co., Keats Auto Co. v.	412
Oregon-Washington R. R. & Navigation Co., Menzies-Du Bois Auto Co. v.	412
Packing-House Products to and from Arkansas, Louisiana, and Oklahoma	599
Paper	305
Patent Vulcanite Roofing Co. v. A. & W. Ry. Co.	610
Pelham, Ga., Town of v. A. C. L. R. R. Co.	433
Pennsylvania Co., Carnegie Board of Trade v.	122
Pennsylvania Co., Elgin Commercial Club v.	380
Pennsylvania R. R. Co., Dairymen's Supply Co. v.	406
Pennsylvania R. R. Co., Springfield Commercial Asso. v.	511
Pennsylvania R. R. Co., Sterling Salt Co. v.	38
Pennsylvania R. R. Co., Thomas Iron Co. v.	608
Pennsylvania R. R. Co., Waverly Oil Works Co. v.	621
Pere Marquette R. R. Co., Benjamin Coal Co. v.	645
Pere Marquette R. R. Co., Callaway Fuel Co. v.	645
Pere Marquette R. R. Co., Wisconsin Coal Co. v.	645
Port Arthur Rice Milling Co. v. T. & Ft. S. Ry. Co.	697
Potatoes	298
Proportional Rates	549
Railroad Com'rs. of the State of Florida v. A. C. L. R. R. Co.	356
Railroad Com'rs. of the State of Florida v. Southern Express Co.	634
Railroad Com'rs. of the State of Iowa v. A. E. R. R. Co.	193, 553
Refrigeration of Fruits and Vegetables	326
St. Louis & San Francisco R. R. Co., Sligo Iron Store Co. v.	616
St. Louis Coffee Importers Traffic Asso. v. I. C. R. R. Co.	484
St. Louis, Iron Mountain & Southern Ry. Co., Mfrs. Ry. Co. v.	93
St. Louis, Iron Mountain & Southern Ry. Co., National Lumber Exporters' Asso. v.	215
St. Louis, Iron Mountain & Southern Ry. Co., Texarkana Freight Bureau v.	569

	Page.
St. Louis Southwestern Ry. Co., Mercantile Lumber & Supply Co. v .....	701
Schmidt & Peters, Inc. v. A. T. & S. F. Ry. Co.....	376
Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co.....	529
Scrap Iron .....	467, 525
Seaboard Air Line Ry., Atlanta Journal Co. v.....	186
Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.....	250
Shippers Asso. of Fort Dodge v. C. G. W. R. R. Co.....	76
Sioux City Commercial Club Traffic Bureau v. A. T. & S. F. Ry. Co.....	82
Sligo Iron Store Co. v. St. L. & S. F. R. R. Co.....	616
Smith & Co. v. C. B. & Q. R. R. Co.....	205
Soda Ash, etc.....	613
Southern Express Co., R. R. Com'rs. of Florida v.....	634
Southern Pacific Co., Eichenberg v.....	584
Southern Pacific Co., Mason Brothers v.....	402
Southern Ry. Co., Columbia Chamber of Commerce v.....	339
Southern Ry. Co., Hull Vehicle Co. v.....	619
Springfield Commercial Asso. of Springfield, Ill. v. P. R. R. Co..	511
State of Florida, R. R. Com'rs of, v. Southern Ex. Co.....	634
State of Florida, R. R. Com'rs of, v. A. C. L. R. R. Co.....	356
State of Iowa, Board of R. R. Com'rs of, v. A. E. R. R. Co..	563
State of Iowa v. A. T. & S. F. Ry. Co.....	47
State of Iowa v. C. St. P. M. & O. Ry. Co.....	64, 76
State of Iowa v. N. Y. C. & H. R. R. R. Co.....	64
Sterling Salt Co. v. P. R. R. Co.....	38
Storage Charges at New Orleans, La.....	605
Storage Charges in C. F. A. Territory.....	372
Storage Rules and Regulations at New Orleans, La.....	605
Sulzberger & Sons Co. (See I. & S. 273).....	599
Sundberg v. Great Northern Express Co. et al.....	131
Switching charges at Chicago.....	677
Switching charges at Detroit, Mich.....	494
Sylvester, Ga., City of, v. A. C. L. R. R. Co.....	433
Taylor Dry Goods Co. v. M. P. Ry. Co.....	205, 308
Texarkana & Ft. Smith Ry. Co., Port Arthur Rice Milling Co. v.....	697
Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.....	569
Thomas Iron Co. v. P. R. R. Co.....	608
Tin Cans.....	247
Town of Pelham, Ga. v. A. C. L. R. R. Co.....	433
Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co....	484
Traffic Bureau of Nashville, Tenn. v. L. & N. R. R. Co.....	533

	Page.
Traffic Bureau of the Sioux City Commercial Club <i>v.</i> A. T. & S. F. Ry. Co. ....	82
Transcontinental Rates from Group F .....	1
Union Pacific R. R. Co., United States of America <i>v.</i> .....	518
United Refrigerator & Ice Machine Co. <i>v.</i> C. & N. W. Ry. Co. ....	439
United States of America <i>v.</i> U. P. R. R. Co. ....	518
Vienna, Ga., Mayor & City Council of, <i>v.</i> G. S. & F. Ry. Co. ....	173
Volco Mfg. Co. <i>v.</i> A. T. & S. F. Ry. Co. ....	289
Wausau Advancement Asso. <i>v.</i> C. & N. W. Ry. Co. ....	459
Waverly Oil Works Co. <i>v.</i> P. R. R. Co. ....	621
Weighing of Freight by Carriers subject to the Act .....	7
Wells Fargo & Co., California Commercial Asso. <i>v.</i> .....	131
Wells Fargo & Co., Kohlberg & Co. <i>v.</i> .....	131
Wells Fargo & Co., Sundberg <i>v.</i> .....	131
Wheeler & Motter Mercantile Co. <i>v.</i> A. T. & S. F. Ry. Co. ....	205
Wisconsin Coal Co. <i>v.</i> P. M. R. R. Co. ....	645
Wool Rates between Massachusetts and Maine .....	396



# TABLE OF CASES CITED.

	Page.
Acme Cement Plaster Co. v. St. L. & S. F. R. R. Co. (22 I. C. C. 283) .....	663
Adams Express Co. v. Croninger (226 U. S. 491) .....	138
Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co. (20 I. C. C. 43) .....	172, 243
Appalachia Lumber Co. v. L. & N. R. R. Co. (25 I. C. C. 193) ..	233
Arlington Heights Fruit Exchange v. S. P. Co. (20 I. C. C. 106) ..	327
Armour Packing Co. v. U. S. (209 U. S. 56) .....	119
Ashland Fire Brick Co. v. S. Ry. Co. (22 I. C. C. 115) .....	548
Auto Vehicle Co. v. C. M. & St. P. Ry. Co. (21 I. C. C. 286) ....	379
Avery Manufacturing Co. v. A. T. & S. F. Ry. Co. (16 I. C. C. 20) .....	512
Bascom Co. v. A. T. & S. F. Ry. Co. (17 I. C. C. 354) .....	532
Bentley & Olmsted v. L. S. & M. S. Ry. Co. (17 I. C. C. 56) ....	209
Board of Trade of Carrollton v. C. of G. Ry. Co. (28 I. C. C. 154) .....	284, 451, 569, 582
Board of Trade of Dawson v. C. of G. Ry. Co. (8 I. C. C. 142) ..	176, 284
Board of Trade of Troy v. A. M. Ry. Co. (6 I. C. C. 1) .....	284
Boldt Co. v. C. R. I. & P. Ry. Co. (27 I. C. C. 11) .....	243
Brownell v. C. & C. M. R. R. Co. (5 I. C. C. 638) .....	208
Burnham-Hanna-Munger Dry Goods Co. v. C. R. I. & P. Ry. Co. (14 I. C. C. 299) .....	66, 83, 211, 233, 308
Business Men's League v. A. T. & S. F. Ry. Co. (9 I. C. C. 318) ..	413
Capital Electric Co. v. B. & O. C. T. R. R. Co. (26 I. C. C. 472) ..	420
Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co. (15 I. C. C. 73) .....	503
Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co. (28 I. C. C. 76) .....	65
Central Commercial Co. v. A. T. & S. F. Ry. Co. (26 I. C. C. 373) .....	662
Central Commercial Co. v. L. & N. R. R. Co. (27 I. C. C. 114) ..	651
Chamber of Commerce of Ashburn v. G. S. & F. Ry. Co. (23 I. C. C. 140) .....	176, 284
City of Montezuma v. C. of G. Ry. Co. (28 I. C. C. 280) .....	438, 451
City of Spokane v. N. P. Ry. Co. (19 I. C. C. 162) .....	87, 197, 210
Coe v. Errol (116 U. S. 517) .....	699
Colonial Salt Co. v. M. I. & I. Line (23 I. C. C. 358) .....	41
Colorado Coal Traffic Asso. v. C. & S. Ry. Co. (18 I. C. C. 572) ..	262
Colorado Coal Traffic Asso. v. D. & R. G. R. R. Co. (23 I. C. C. 458) .....	502



	Page.
Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co. (28 I. C. C. 82) ..	65, 201
Columbia Grocery Co. v. L. & N. R. R. Co. (18 I. C. C. 502) ..	452
Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co. (19 I. C. C. 218) .....	84, 199, 210, 225, 420
Commutation Rate Case (21 I. C. C. 428) .....	129, 324
Coombs v. C. M. & St. P. Ry. Co. (13 I. C. C. 192) .....	659
Corporation Commission of Oklahoma v. A. & S. Ry. Co. (26 I. C. C. 520) .....	567
Crane Iron Works v. C. R. R. Co. of N. J. (17 I. C. C. 514) ..	120
Crane Iron Works v. P. & R. Ry. Co. (15 I. C. C. 248) .....	120
Crane Iron Works v. U. S. (1 Com. Ct. Rep. 453) .....	120
Detroit Reconsigning Case (25 I. C. C. 392) .....	656
Detroit Traffic Asso. v. L. S. & M. S. Ry. Co. (21 I. C. C. 257) ..	651
Duncan & Co. v. N. C. & St. L. Ry. (16 I. C. C. 590) .....	209
Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co. (27 I. C. C. 370, 382) .....	618
Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co. (25 I. C. C. 93) .....	427
Eichenberg v. Southern Pacific Co. (14 I. C. C. 250) .....	584
Eschner v. P. R. R. Co. (18 I. C. C. 60) .....	323
Farmers, Merchants & Shippers Club of Kansas City v. A. T. & S. F. Ry. Co. (12 I. C. C. 351) .....	684
Field v. S. Ry. Co. (13 I. C. C. 298) .....	129, 324
Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co. (14 I. C. C. 476) .....	240
Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co. (22 I. C. C. 11) .....	279
Fort Dodge Commercial Club v. I. C. R. R. Co. (16 I. C. C., 572) ..	79
General Electric Co. v. N. Y. C. & H. R. R. R. Co. (14 I. C. C. 237) .....	120
Gibbs v. Consolidated Gas Co. of Baltimore (130 U. S. 396) ..	646, 655
Gilmore & Co. v. C. & N. W. Ry. Co. (25 I. C. C. 403) .....	677
Grand Trunk Ry. Co. of Canada v. Michigan R. R. Commission (231 U. S. 457) .....	629, 632
Greater Des Moines Committee v. C. R. I. & P. Ry. Co. (17 I. C. C. 54) .....	67
Greater Des Moines Committee v. C. R. I. & P. Ry. Co. (17 I. C. C. 57) .....	79
Harwell v. C. & W. R. R. Co. (1 I. C. C. 236) .....	184
Hewins v. N. Y., N. H. & H. R. R. Co. (10 I. C. C. 221) .....	620
Hill & Bro. v. N. C. & St. L. Ry. (6 I. C. C. 343) .....	175, 283
Hillsdale Coal & Coke Co. v. P. R. R. Co. (23 I. C. C. 186) ..	585,
	645, 657

	Page.
<b>Hitchman Coal &amp; Coke Co. v. B. &amp; O. R. R. Co.</b> (16 I. C. C. 512, 519).....	450
<b>In re Advances on Coal</b> (27 I. C. C. 223).....	527
<b>In re Advances on Coal by the C. &amp; O. Ry. Co.</b> (22 I. C. C. 604).....	240
<b>In re Advances on Ground Iron Ore</b> (26 I. C. C. 675).....	465
<b>In re Advances in Rates on Fresh Meats and Packing House Products</b> (23 I. C. C. 652).....	600
<b>In re Advance in Rates on Tin Cans</b> (27 I. C. C. 298).....	247
<b>In re Alleged Unreasonable Rates on Meats</b> (22 I. C. C. 160).....	262,
333, 454, 600	
<b>In re Alleged Unreasonable Rates on Meats</b> (23 I. C. C. 656)....	333,
567, 600	
<b>In re Allowances to Elevators by the U. P. R. R. Co.</b> (12 I. C. C. 85).....	492
<b>In re Allowances to Elevators by the U. P. R. R. Co.</b> (14 I. C. C. 315).....	492
<b>In re Express Rates</b> (24 I. C. C. 380).....	132, 246
<b>In re Mileage, Excursion and Commutation Tickets</b> (23 I. C. C. 95).....	324
<b>In re Rates from Walsenburg Coal Field</b> (26 I. C. C. 85).....	258
<b>In re Rates on Wool</b> (23 I. C. C. 151).....	397
<b>In re Rates on Wool</b> (25 I. C. C. 185).....	397
<b>In re Rates on Wool</b> (25 I. C. C. 675).....	332
<b>In re Restricted Rates</b> (20 I. C. C. 426).....	307
<b>In re Scrap Iron Rates</b> (28 I. C. C. 467).....	526
<b>In re Substitution of Tonnage at Transit Points</b> (18 I. C. C. 280).....	365
<b>In re Texas Common Points</b> (26 I. C. C. 528).....	596
<b>In re Transcontinental Commodity Rates</b> (26 I. C. C. 456)....	414
<b>In re Weighing Investigation</b> (28 I. C. C. 7).....	353
<b>In re Western Classification No. 51</b> (25 I. C. C. 442).....	207, 378, 510, 689
<b>Indiana Steel &amp; Wire Co. v. C. R. I. &amp; P. Ry. Co.</b> (16 I. C. C. 155).....	548
<b>Indianapolis Freight Bureau v. C. C. C. &amp; St. L. Ry. Co.</b> (23 I. C. C. 198).....	61
<b>Indianapolis Freight Bureau v. C. C. C. &amp; St. L. Ry. Co.</b> (26 I. C. C. 53).....	387
<b>Indianapolis Freight Bureau v. P. R. R. Co.</b> (15 I. C. C. 567)....	487
<b>Interior Iowa Cities case</b> (28 I. C. C. 64).....	77, 80, 532, 564
<b>International Salt Co. v. G. &amp; W. R. R. Co.</b> (20 I. C. C. 530)....	39, 46
<b>I. C. C. v. B. &amp; O. R. R. Co.</b> (145 U. S. 263).....	129
<b>I. C. C. v. B. &amp; O. R. R. Co.</b> (225 U. S. 326).....	307
<b>I. C. C. v. C. B. &amp; Q. R. R. Co.</b> (218 U. S. 113).....	83
<b>I. C. C. v. C., R. I. &amp; P. Ry. Co.</b> (218 U. S. 88).....	68

	Page
<i>I. C. C. v. Dittenbaugh</i> (222 U. S. 42) .....	491
<i>Iowa State Board of Railroad Commissioners v. A. E. R. R. Co.</i> (28 I. C. C. 193) .....	563
<i>Joynes v. P. R. R. Co.</i> (17 I. C. C. 361) .....	645, 657
<i>Joynes v. P. R. R. Co.</i> (21 I. C. C. 458) .....	607
<i>Kennedy &amp; Co. v. St. L. S. W. Ry. Co.</i> (22 I. C. C. 277) .....	424
<i>Kentucky &amp; Indiana Bridge Co. v. L. &amp; N. R. R. Co.</i> (37 Fed. Rep. 567) .....	624
<i>Kindel v. B. &amp; A. R. R. Co.</i> (11 I. C. C. 495) .....	210
<i>Kindel v. N. Y., N. H. &amp; H. R. R. Co.</i> (15 I. C. C. 555) ..	82, 199, 419
<i>Lagrange Chamber of Commerce v. A. &amp; W. P. R. R. Co.</i> (28 I. C. C. 178) .....	284, 451
<i>Lake Shore &amp; M. S. Ry. Co. v. Smith</i> (173 U. S. 684) .....	323
<i>Little Rock &amp; Memphis Ry. Co. v. St. L. I. M. &amp; S. R. R. Co.</i> (59 Fed. 400) .....	625
<i>Louisville &amp; Nashville R. R. Co. v. Behlmer</i> (175 U. S. 648) ..	581
<i>Louisville &amp; Nashville R. R. Co. v. Mottley</i> (219 U. S. 467) ..	646, 655
<i>Louisville &amp; Nashville R. R. Co. v. Stock Yards Co.</i> (212 U. S. 139) .....	627
<i>McNeill v. S. Ry. Co.</i> (202 U. S. 543) .....	628
<i>MacLeon v. B. &amp; M. R. R. Co.</i> (9 I. C. C. 642) .....	620
<i>Manufacturers Ry. Co. v. St. L. I. M. &amp; S. Ry. Co.</i> (21 I. C. C. 304) .....	94, 119
<i>Maricopa County Commercial Club v. P. &amp; E. R. R. Co.</i> (22 I. C. C. 221) .....	429
<i>Maricopa County Commercial Club v. S. F. P. &amp; P. Ry. Co.</i> (19 I. C. C. 257) .....	1, 197
<i>Maricopa County Commercial Club v. S. F. P. &amp; P. Ry. Co.</i> (21 I. C. C. 329) .....	1
<i>Marshall Oil Co. v. C. &amp; N. W. Ry. Co.</i> (26 I. C. C. 575) .....	228
<i>Marten v. L. &amp; N. R. R. Co.</i> (9 I. C. C. 581) .....	582
<i>Mayor &amp; City Council, Vienna, Ga. v. G. S. &amp; F. Ry. Co.</i> (28 I. C. C. 173) .....	284, 451
<i>Mayor &amp; Council of Boston, Ga. v. A. C. L. R. R. Co.</i> (24 I. C. C. 50) .....	437
<i>Mayor &amp; Council of Tifton v. L. &amp; N. R. R. Co.</i> (9 I. C. C. 160) ..	176, 451
<i>Memphis Freight Bureau v. L. &amp; N. R. R. Co.</i> (26 I. C. C. 402) ..	537
<i>Merchants &amp; Mfrs. Asso. of Baltimore v. P. R. R. Co.</i> (23 I. C. C. 474) .....	541, 624
<i>Mississippi River Rate case</i> (28 I. C. C. 47) .....	65
<i>Missouri &amp; Illinois Coal Co. v. I. C. R. R. Co.</i> (22 I. C. C. 39, 46) ..	474
<i>Monroe Progressive League v. St. L. I. M. &amp; S. Ry. Co.</i> (15 I. C. C. 534) .....	573
<i>Morgan Grain Co. v. A. C. L. R. R. Co.</i> (19 I. C. C. 460) .....	183

	Page.
Morris Iron Co. v. B. & O. R. R. Co. (26 I. C. C. 240).....	627
Mountain Ice Co. v. D. L. & W. R. R. Co. (21 I. C. C. 45)....	336
National Lumber Exporters' Asso. v. K. C. S. Ry. Co. (25 I. C. C. 78).....	217
National Mfg. Co. v. A. T. & S. F. Ry. Co. (23 I. C. C. 79)...	673
National Petroleum Asso. v. C. M. & St. P. Ry. Co. (14 I. C. C. 287).....	708
National Petroleum Asso. v. M. P. Ry. Co. (18 I. C. C. 599)...	708
National Refining Co. v. M. K. & T. Ry. Co. (23 I. C. C. 527)...	662
National Refining Co. v. M. P. Ry. Co. (24 I. C. C. 315).....	663
National Wool Growers Asso. v. O. S. L. R. R. Co. (25 I. C. C. 675).....	243
New York Hay Exchange Asso. v. P. R. R. Co. (14 I. C. C. 178).....	607
Ohio Railroad Com. v. Worthington (225 U. S. 101).....	700
Ottumwa Commercial Asso. v. C. B. & Q. R. R. Co. (17 I. C. C. 413).....	67, 79
Pennsylvania R. R. Co. v. International Coal Mining Co. (230 U. S. 184).....	660
Planters Compress Co. v. C. C. C. & St. L. Ry. Co. (11 I. C. C. 382).....	208
Planters Gin & Compress Co. v. Y. & M. V. R. R. Co. (16 I. C. C. 131).....	581
Ponchatoula Farmers Asso. v. I. C. R. R. Co. (19 I. C. C. 513)...	636
Porter v. St. L. & S. F. R. R. Co. (15 I. C. C. 1).....	659
Railroad Commissioners of Iowa v. I. C. R. R. Co. (20 I. C. C. 181).....	426
Railroad Commissioners of Kansas v. A. T. & S. F. Ry. Co. (22 I. C. C. 407).....	43, 225
Railroad Commission of Nevada v. S. P. Co. (19 I. C. C. 238)...	1, 197
Railroad Commission of Nevada v. S. P. Co. (21 I. C. C. 329).....	1, 233, 609
Railroad Commission of Tennessee v. A. A. R. R. Co. (17 I. C. C. 418).....	548
Railroad Commission of Texas v. A. T. & S. F. Ry. Co. (20 I. C. C. 463).....	89, 575
Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co. (18 I. C. C. 440).....	183
Rosenbaum Bros. v. L. & N. R. R. Co. (22 I. C. C. 62)....	387, 532
Saginaw Board of Trade v. G. T. Ry. Co. (17 I. C. C. 128)....	50
St. Louis, S. & P. R. R. Co. v. P. & P. U. Ry. Co. (26 I. C. C. 226).....	628
Samuels & Co. v. St. L. S. W. Ry. Co. (20 I. C. C. 646).....	702
Schmidt & Sons v. M. C. R. R. Co. (23 I. C. C. 684).....	397

	Page.
Serry v. S. P. Co. (18 I. C. C. 554).....	389, 532
Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. (26 I. C. C. 638).....	252, 260
Signor Tie Co. v. I. & G. N. R. R. Co. (21 I. C. C. 615).....	702
Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co. (23 I. C. C. 98).....	355
Slider v. S. Ry. Co. (24 I. C. C. 312).....	538
Solvay Process Co. v. D. L. & W. R. R. Co. (14 I. C. C. 246)...	120
Southern Grocery Co. v. G. N. Ry. Co. (12 I. C. C. 229).....	284
Southern Pacific Terminal Co. v. I. C. C. (219 U. S. 498)...	584, 700
Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co. (24 I. C. C. 570).....	91
Springfield Commercial Asso. v. P. R. R. Co. (28 I. C. C. 511)...	561
Standard Vitrified Brick Co. v. C. B. & Q. R. R. Co. (25 I. C. C. 669).....	286
Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co. (14 I. C. C. 364).....	473
State of Iowa v. A. C. L. R. R. Co. (24 I. C. C. 134).....	675
State of Iowa v. A. T. & S. F. Ry. Co. (28 I. C. C. 47).....	65
State of Iowa v. C., St. P. M. & O. Ry. Co. (28 I. C. C. 64).....	77,
	532, 564
State of Kansas v. A. T. & S. F. Ry. Co. (27 I. C. C. 673)...	291
Stowe-Fuller Co. v. P. Co. (12 I. C. C. 215).....	293
Sunderland Bros. v. M. P. Ry. Co. (22 I. C. C. 141).....	286
Sunflower Glass Co. v. M. P. Ry. Co. (22 I. C. C. 391).....	224
Swanson v. T. & P. Ry. Co. (U. R. A-166).....	595
Taylor Dry Goods Co. v. M. P. Ry. Co. (28 I. C. C. 205).....	308
Texas Common Point Case (26 I. C. C. 528).....	596
Texas Seed & Floral Co. v. N. Y. C. & St. L. R. R. Co. (23 I. C. C. 504).....	516
Thompson Lumber Co. v. I. C. R. R. Co. (13 I. C. C. 657).....	217
Traffic Bureau, Merchants Exchange, of St. Louis, v. C. B. & Q. R. R. Co. (22 I. C. C. 496).....	492
Union Pacific R. R. Co. v. Updike Grain Co. (222 U. S. 215)...	491
United States v. Terminal R. R. Asso. of St. Louis (224 U. S. 383).....	542
Virginia-Carolina Chemical Co. v. A. C. L. R. R. Co. (22 I. C. C. 394).....	228
Warnock Company v. O. & N. W. Ry. Co. (21 I. C. C. 546)...	64,
	76, 88, 211, 309
Wheeler & Motter Mercantile Co. v. C. B. & Q. R. R. Co. (20 I. C. C. 141).....	211, 309
Wilburine Oil Works v. P. R. R. Co. (18 I. C. C. 548).....	620
Wilson Produce Co. v. P. R. R. Co. (14 I. C. C. 170).....	607

# INTERSTATE COMMERCE COMMISSION.

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CHARLES A. PROUTY, OF VERMONT.

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BALTHASAR H. MEYER, OF WISCONSIN.

JOHN H. MARBLE, OF CALIFORNIA.

GEORGE B. MCGINTY, Secretary.

November 21, 1913, Commissioner Marble died.

28 I. C. C.

XXIII



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## PROCEEDINGS ON THE DEATH OF MR. COMMISSIONER MARBLE

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JOHN HOBART MARBLE, a member of the Interstate Commerce Commission, died at his residence in Washington, D. C., on Friday, November 21, 1913.

Mr. Marble was born at Ashland, Nebr., on February 26, 1869; was educated at the University of Nebraska; subsequently started a newspaper at Lincoln, Nebr., and later removed to San Francisco, where he worked as a printer and at the same time studied law. In 1893 he was married to Mattie Louise O'Brien, of Minneapolis, who, with his daughter Hazel, survives him. He was admitted to the San Francisco bar in 1903, and was engaged in the general practice of the law there until the summer of 1906, when he came to Washington as confidential clerk to Commissioner Lane. Within a few months he was designated as an attorney for the Commission and was intrusted with the preparation and presentation to the Commission of many important cases. In 1907 the division of inquiry, having the duty of enforcing the law regarding rebates, was instituted, with Mr. Marble as its first head. In June, 1911, he was selected and served for several months as attorney for the United States Senate Committee on Elections in the Lorimer investigation. On February 21, 1912, he was appointed secretary of the Commission to succeed Edward A. Moseley, deceased. When Mr. Lane became secretary of the interior, Mr. Marble was appointed his successor as a member of the Commission, taking the oath of office March 10, 1913, and serving until the time of his death.

Upon the convening of the Commission in the hearing room on Monday, November 24, 1913, Chairman Clark said:

"The Commission assembles this morning under extremely sad and very trying circumstances. Yesterday we laid to his last rest a colleague who, by his genial, helpful, and splendid personality, indefatigable industry, sterling integrity, unswerving loyalty, and broad



fair-mindedness, won our affections, regard, and esteem to a superlative degree. Were we to follow our personal wishes and inclinations, we should suspend business affairs for a time out of respect for his memory, but the demands of the public service are such as to lead us to forego these inclinations and to proceed with our work, knowing that no formal action which we could take would add to the honor and esteem which he so fully and ably earned, and realizing that neither formal action nor words could adequately express the profound sorrow that has entered deeply into each of our hearts."

Mr. Daniel Willard, president of the Baltimore & Ohio Railroad Company, said:

"Mr. Chairman and Gentlemen of the Commission: Before we proceed with the business that is immediately before us I would like, on behalf of myself and my associates, to extend to you the sympathy which we feel because of the great loss which you have recently sustained in the death of one of your members, Mr. Marble.

"While Mr. Marble had been a member of the Commission but a short time, his connection with it in various capacities had been of sufficient duration to enable many, if not most, of us to know him more or less intimately. And no one who knew him at all could fail to appreciate his keen and conscientious sense of duty.

"Personally, I have no doubt that his sudden and unexpected death was due very largely, if not entirely, to overwork caused by his high sense of the responsibilities which rested upon him. In such cases, of course, all sympathize deeply with those whose grief, because of relationship, is more personal and intimate. We feel, however, that in a large sense we also share with them and with you the burden occasioned by his loss."

On the next day, during a hearing before the Commission at Washington, Rush C. Butler, Esq., a member of the Chicago bar, addressed the Commission as follows:

"Mr. Chairman and Members of the Commission: In compliance with the wishes of many of his friends and in response to the impulses of my heart, I rise to pay tribute, feeble though it must be, to the divine spirit that until a few days ago was with us in a human body and is now passed on forever.

"John H. Marble was a man among men. He was none the less strong because his manner was mild. He was none the less determined because his disposition was sweet, his heart kindly and gentle. His ideals were high, but not too high for attainment, and as he made them real they served as the bases of ideals even more lofty, yet from his new eminence not less attainable.

"Possessing all the quickening and enlightening qualities of mind and heart that gave him a conscience as keen as it was clear, he was true to every suggestion of right and duty—true to himself, his friends, his family, his every relation and every interest in life.

"Our hearts sorrow for the wife and daughter, upon whom his sudden taking away has fallen as a mysterious, unexplained, and unexplainable horror, and who, because of it, suffer unspeakable anguish.

"To you who were his associates in a public service, than which there is none more arduous, more important, or more honorable, we extend our sympathy in the loss of a companion, helper, and friend.

"In this forum are waged some of the mightiest legal battles of our time. Here John Marble appeared more frequently perhaps as advocate than as arbiter. But whether here as examiner, or attorney, secretary, or commissioner, he viewed the conflict serenely, impersonally, justly. He feared no foe, favored no friend. His affections were not the less deep because they yielded to his judgment. In the heat and strife of it all he stood his ground in simple, unaffected manner. His memory is revered, as he was loved by every one whose privilege it was to know him."



# INTERSTATE COMMERCE COMMISSION REPORTS.

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INVESTIGATION AND SUSPENSION DOCKET No. 207.

## TRANSCONTINENTAL RATES FROM GROUP F.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN CLASS AND COMMODITY RATES BETWEEN POINTS IN IOWA AND MINNESOTA AND POINTS IN PACIFIC COAST TERRITORY.

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*Submitted May 26, 1913. Decided June 17, 1913.*

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1. Proposed readjustment of group F with respect to class traffic to and from the south Pacific coast terminals and to and from the southwestern intermountain territory found to have been justified by the respondent.
2. Order of suspension entered herein vacated except as to a proposed increased rate on salt from Duluth to the territory above described.

*W. P. Trickett* for Minneapolis Civic and Commerce Association.

*T. A. McGrath* for St. Paul Association of Commerce.

*Walter E. McCornack* for Diamond Crystal Salt Company.

*F. H. Wood* and *L. F. Wilcox* for Union Pacific system.

*James L. Coleman* for Atchison, Topeka & Santa Fe Railway Company and Southern Pacific Company.

*James G. Wilson* for Southern Pacific Company.

*F. B. Houghton* for Atchison, Topeka & Santa Fe Railway Company.

*R. H. Countiss* for Trans-Continental Freight Bureau.

## REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

In the tariffs under suspension here the respondents have proposed to break up and rearrange one of the groups which the Commission adopted as a basis for the rates prescribed in the so-called intermountain cases; *Railroad Commission of Nevada v. Southern Pacific Co.*, 19 I. C. C., 238; 21 I. C. C., 329; and *Maricopa County Commercial Club v. S. F., P. & P. Ry. Co.*, 19 I. C. C., 257; 21 I. C. C., 329. The group in question for convenience is designated as group F on the



which we have suspended the respondents propose to modify the group by distributing parts of it among groups D and E. They desire to accomplish this by applying Mississippi River rates to all points north of Sioux City to and including St. Paul and Minneapolis. This will put those points in group E. They also desire to apply the Chicago, or group-D, basis to points north of the twin cities to and including Duluth and Superior. This will leave group F undisturbed south of Sioux City.

The change proposed is to affect only the traffic moving to and from the south Pacific coast terminals and to and from the southwestern intermountain territory; no change is proposed with respect to traffic to and from the north Pacific coast terminals. The western territory affected by the readjustment may be described roughly as lying west of a line drawn from Ogden southerly through Salt Lake City and Albuquerque to El Paso, and south of the lines of the Southern Pacific and the Western Pacific. This territory of destination is somewhat enlarged in the tariffs when, on eastbound traffic, it becomes a territory of origin.

A glance at the map at once suggests the propriety of these changes on purely geographic grounds. For example, Flagstaff, which may be taken as a typical point of destination in the intermountain country, is 1,260 miles from Kansas City. The haul from Duluth to Flagstaff through Kansas City is 693 miles longer. The distance to Flagstaff from the twin cities is 540 miles greater than from Kansas City. The relation of rates between groups D, E, and F may further be illustrated by the following table of rates per 100 pounds to Phoenix, also a typical point; for convenience the table is limited to the numbered classes:

	Classes.				
	1	2	3	4	5
Group F .....	\$2.50	\$2.17	\$1.83	\$1.58	\$1.33
Group E .....	2.80	2.42	2.03	1.71	1.43
Group D .....	2.90	2.51	2.09	1.75	1.47

The rates of the respective groups to the south coast terminals are as follows:

Group F .....	\$3.00	\$2.60	\$2.20	\$1.83	\$1.60
Group E .....	3.30	2.85	2.38	2.00	1.68
Group D .....	3.40	2.95	2.45	2.07	1.75

If, therefore, the twin cities are taken out of group F and put into group E the resulting increase in rates on class traffic to Phoenix and the coast will be as follows:

To Phoenix .....	\$0.30	\$0.25	\$0.20	\$0.13	\$0.10
To south coast terminals .....	.30	.25	.18	.17	.08

And if Duluth is taken out of group F and put on the Chicago, or group D, basis, the following table indicates the extent of the resulting increase in its class rates:

	Classes.				
	1	2	3	4	5
To Phoenix.....	\$0.40	\$0.34	\$0.26	\$0.17	\$0.14
To the coast terminals.....	.40	.35	.25	.24	.15

The respondents justify these increases on two grounds: On west-bound traffic the sum of the rates west of Duluth and the lake-and-rail rates to that port from the east makes lower than the all-rail rates prescribed by the Commission in the intermountain cases. This rail-lake-and-rail route is from 600 to 700 miles longer than the all-rail routes. The distance from New York to Phoenix, for example, by the all-rail short-line route is 2,724 miles, and by the water route through Duluth is 3,420 miles. The contention is that lower rates should not be made over so circuitous a line. In this, however, we see little of real merit. Duluth and the twin cities are clearly entitled to reasonable rates to and from all points. They are also fairly entitled to every rate advantage that their proximity to the great lakes may fairly give them. Moreover, the fact that the through rates, on the water-borne traffic to Duluth and to the rate-breaking points in the northwest, may be low is not a sufficient reason for depriving those points of the benefits of those great channels of commerce by imposing higher rates upon their outbound shipments to the intermountain and south Pacific coast terminals.

The second, and a stronger and more logical, ground for the proposed advance is that the points in question, by reason of their location, naturally belong in the groups to which they are assigned in the proposed tariffs. As a matter of fact, under the present adjustment lower rates from group-F points in Minnesota and Wisconsin are carried by the St. Paul, the Burlington, the Great Western, the Rock Island, and the Illinois Central through higher rate territory in those states and also in Iowa. The position of this group and its relation to groups D and E as revealed on the map makes this unavoidable. In other words, points in Iowa and Missouri now take the Mississippi River rate basis, while the twin cities and Duluth take the lower Missouri River rates. It is contended also that this violation of the fourth section is further accentuated by the fact that certain lines may carry the traffic from group F through territory in Wisconsin that takes even the very substantially higher Chicago or group D rates; but this movement is somewhat circuitous and does not lend

material support to the respondents' case. If the advance is to be justified at all it must be either on the ground that the suggested changes are necessary to avoid the fourth section violations first suggested or that there has been a substantial maladjustment of groups D, E, and F. On both these grounds the readjustment appeals to us as being proper and as resulting in relatively reasonable rates.

In the intermountain cases above cited we adopted the same rate groups that the carriers had maintained for many years on traffic moving between the Pacific coast and defined eastern territory; and to some extent we graded the rates fixed in those cases in accordance with distance. But in rendering our decision we did not undertake to control the resulting departures from the long-and-short-haul provision of the act. Under the transcontinental tariffs in effect before the orders in those cases were made effective, there were no violations of the fourth section, because the old rates were more or less of the postage-stamp kind; that is to say, in most instances the rates were the same to the Pacific coast from all points of origin east of the Colorado common-point territory. The use of these groups had theretofore been confined largely to commodity rates, and these rates from the different groups were so arranged as to avoid any numerous violations of the long-and-short-haul clause of the act. But when in accordance with our order in those cases, the class rates were graded from the different defined groups in the east, violations of the fourth section resulted both under the class rates and the commodity rates. Our order in *Maricopa County Commercial Club v. S. F., P. & P. Ry. Co.*, *supra*, usually referred to as the *Phoenix case*, fixed the class rates on their present basis from Kansas City only. But that proceeding was disposed of concurrently with *Railroad Commission of Nevada v. Southern Pacific Co.*, *supra*, otherwise known as the *Reno case*, and the defendant carriers, for the sake of uniformity and after consulting with the Commission, voluntarily extended to the Phoenix readjustment the territorial groups that had been prescribed for Reno; so that under the tariffs now in effect the adjustment covers all the territory west of the Ogden-El Paso line to the coast terminals.

All things considered, we think that the proposed rates have been justified in the record. We know no reason why Duluth should have better rates than Chicago to and from the territory in question, or why the twin cities should have better rates than the upper Mississippi River crossings. Certainly there is little ground for a parity of rates to and from the southwest as between Kansas City and Duluth, which are at the two extremities of group F.

Minneapolis and St. Paul are the commercial centers most interested in the proposed readjustment, and they took the burden of defending



the present rates. On behalf of both communities it was substantially admitted on the hearing that group F, on a proper and scientific basis of rate making, might well be shortened, and that the twin cities and Duluth could properly be grouped respectively with the Mississippi River and Chicago territory on traffic moving between those points and the southwest. It was also admitted that this traffic had reached no very large proportions, although within the last two or three years some jobbing houses at Minneapolis and St. Paul had established something of a trade in the southwest, which will doubtless grow if the present adjustment is maintained. The representatives of those communities in fact were apparently ready to withdraw their protest upon assurances that a similar readjustment would be made with respect to traffic moving between the gulf ports and lower Mississippi River points to the north coast terminals and the northwest intermountain territory; in other words, the protestants contend that it is unfair to the twin cities and Duluth to increase their rates to the southwest before making a similar increase from the gulf ports and Mississippi River points to the northwest. The relation of the latter rates to the rates involved here is too remote, however, to be of practical importance at this time.

In the tariffs under suspension the respondents propose also to withdraw a commodity rate of 50 cents per 100 pounds on salt from Duluth to the south Pacific coast terminals, and to advance the rate to 60 cents per 100 pounds, thus putting it on the Chicago basis. We shall not permit this advance at this time, more particularly because the respondents have filed with us an independent application for permission to establish a 50-cent rate on salt from Chicago to that territory without observing the provisions of the long-and-short-haul clause of the act. The application has not been disposed of because the carriers have not sufficiently advised us of its merits. Until they have furnished us with sufficient information to enable us to pass on the application they must be regarded as estopped from advancing the Duluth rate. On the record we find that the proposed increased rate on salt from Duluth to south Pacific coast terminals has not been justified.

The order suspending the tariff in question will be vacated in respect of all the rates except the rate on salt above mentioned; it will be understood, however, that the findings and order herein will be subject to such modifications, if any, as may be required as the result of the action taken by the carriers in compliance with the views to be announced in *Iowa State Board of Railroad Commissioners v. A. E. R. R. Co.*, Docket No. 5241.

No. 4631.

**IN THE MATTER OF THE INVESTIGATION OF ALLEGED  
IRREGULARITIES AND DISCREPANCIES IN THE  
WEIGHING OF FREIGHT BY CARRIERS SUBJECT TO  
THE ACT TO REGULATE COMMERCE.**

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*Submitted May 16, 1913. Decided June 18, 1913.*

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1. Inaccuracies in weighing result in the imposition of unreasonable charges and in discrimination between shippers just as really as do differences in the freight rate itself.
2. The record herein discloses that a majority of the track scales now in use should be at once rebuilt in order to obtain reasonably accurate results. It is also apparent that many additional scales should be installed.
3. A modern scale, properly installed and kept in proper condition, should be accurate within at least 100 pounds, and when under test it shows a variation of 100 pounds or more it should be considered out of order. All scales should be tested by the test car at least once in two months; in many cases every month.
4. Cars should never be weighed in motion coupled at both ends. They may properly be weighed in motion when uncoupled upon scales especially designed for that purpose and in charge of thoroughly competent men. Cars should not ordinarily be weighed when coupled at one end, and never unless at points where the greatest attention is paid to the condition of the scale and the competency of the weighmaster.
5. A prolific source of error is the wrong stenciling of the tare weight of cars; when the car weighs more than the stenciled tare the shipper loses, while when the car weighs less than the stenciled tare the shipper gains. Correction of an erroneous stenciled weight is by a proper reweighing of the car at stated times.
6. Inaccuracies in weighing particular commodities, such as grain, coal, and lumber, discussed and various remedies considered; and criticism of certain team-track weighing made.
7. General rules and practices of carriers whereby large amounts of carload freight are exempted from all weighing whatsoever considered and various criticisms and recommendations thereon made.
8. Remedies for the defects in weighing revealed by this investigation discussed at length, and the opinion advanced that some federal tribunal, perhaps this Commission, should be given authority in the following respects: (a) To fix the points at which track scales shall be installed; (b) to prescribe the standard of such scales and their installation; (c) to test or supervise the testing of such scales; and (d) to supervise the operation.

- J. T. Marchand* for Interstate Commerce Commission.  
*D. H. Beatty, C. B. Northrop, G. W. Taylor, and T. H. Gatlin* for Southern Railway Company.  
*Belleville & Bell* for National Industrial Traffic League.  
*C. B. Berntsen, R. B. Scott, and W. E. Wells* for Chicago, Burlington & Quincy Railroad Company.  
*W. M. Bertolet* for Pennsylvania Retail Coal Merchants' Association.  
*C. H. Blatchford* for Boston & Maine Railroad, Maine Central Railroad Company, and others.  
*A. H. Boyd, jr., and L. D. Davis* for Baltimore & Ohio Railroad Company.  
*C. A. Briggs* for Bureau of Standards.  
*T. H. Burgess and F. H. Post* for Erie Railroad Company.  
*A. P. Burgwin* for Pennsylvania lines, west, and others.  
*O. E. Butterfield* for New York Central lines.  
*E. B. Crosley, W. L. Kinter, C. H. Ewing, and R. L. Russell* for Philadelphia & Reading Railway Company.  
*H. S. Dodge* for Western Weighing & Inspection Bureau.  
*F. P. Eyman and C. C. Wright* for Chicago & North Western Railway Company.  
*R. V. Fletcher* for Illinois Central Railroad Company and others.  
*W. A. Glasgow, jr.,* for Anaconda Copper Mining Company and others.  
*G. L. Graham* for New York, New Haven & Hartford Railroad Company.  
*W. T. Hughes* for Chicago, Rock Island & Pacific Railway Company and others.  
*J. H. Limberger* for Trunk Line Association.  
*J. C. Lincoln* for Merchants' Association of New York.  
*J. W. McClure* for Lumbermen's Club of Memphis and others.  
*F. D. McKenney* for Pennsylvania Railroad Company and others.  
*R. Walton Moore* for Illinois Central Railroad Company and others.  
*T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company and others.  
*W. S. Phippen* for National Wholesale Lumber Dealers' Association.  
*H. T. Porter* for Bessemer & Lake Erie Railroad Company.  
*P. P. Rainer* for Joint Rate Inspection Bureau.  
*T. W. Reath, H. A. Tate, and G. I. Waterhouse* for Norfolk & Western Railway Company.  
*G. K. Smith* for National Lumber Manufacturers' Association and others.

*J. E. Stark* for National Hardwood Lumber Association.

*H. W. Woolf* for Southern Weighing & Inspection Bureau.

*F. G. Wright* for Missouri Pacific Railway Company and others.

*James Turnock* and *J. F. Cruikshank* for Streeter-Amet Weighing & Recording Company.

*Teal, Minor & Winfree* for West Coast Lumber Manufacturers' Association.

*O. F. Bell* for National Industrial Traffic League.

*Pierson & Shertz* for Philadelphia Coal Exchange.

*Davis, Kellogg & Severance* and *F. D. Adams* for Duluth & Iron Range Railroad Company and others.

*C. B. Aitchison* for Oregon Railroad Commission.

#### REPORT OF THE COMMISSION.

##### *PROUTY, Commissioner:*

This investigation was undertaken in consequence of numerous complaints received from all sections that the weights upon which freight charges were assessed were grossly inaccurate and that great difficulty was experienced in correcting these inaccuracies. The principal complaint was against carload weights, and the weighing of carloads by track scales has been the principal subject investigated, although some attention has been incidentally given to platform scales.

The investigation has taken a very wide range. Hearings have been held in all parts of the country, occupying 46 days, in the course of which over 7,000 pages of testimony have been taken and a great number of exhibits accumulated. Everything connected with the installation and the operation of track scales has been gone into, and the various rules of the carriers for the ascertainment and correction of weights have been considered.

The results of this investigation have abundantly justified the proceeding. The first hearing made plain the deficiencies of the carriers in this respect, and immediate steps were taken for the betterment of weighing conditions, which have already resulted in most marked improvement. Looking at conditions as they existed when the order instituting this investigation was made, on January 15, 1912, this can be affirmed with some confidence: Three-fourths of all the track scales in use in the United States were of defective design or improperly installed. Less than one-fourth were properly inspected. Not more than 10 per cent were accurately tested, and a majority were not in any proper sense tested at all. The methods of weighing were heedless and unsatisfactory in many cases. The stenciled tare weights upon 80 per cent of all cars were erroneous. While check-weighing at certain points where better facilities were available and superior operating conditions prevailed tended to reveal many of

the original erroneous weights, these changes in the original weight were a source of constant irritation and inconvenience to shippers.

The carriers insist that these errors were as often in favor of as against the shipper, and that on the whole they would offset one another. There is, and there can be, no intelligent opinion upon this point, nor is this, perhaps, material. The freight rate is in most cases assessed by the hundred pounds. It amounts to the same thing whether the rate be high or the weight be excessive. Inaccuracies in weighing result in the imposition of unreasonable charges and in discrimination between shippers just as really as do differences in the freight rate itself. Nor does it meet the situation to say that the railroad has given to one shipper, by assessing charges upon too low a weight, what it has taken from another by enforcing an excessive weight. In so far as possible the weight assessed should be the true weight.

This report will deal as briefly as possible with the following matters:

1. The installation of the track scale.
2. Inspection and testing.
3. Operation.
4. Tare weights of cars.
5. Weighing of particular commodities.
6. General rules.
7. Remedial suggestions.

#### INSTALLATION OF TRACK SCALES.

This record contains the testimony of the representatives of one or more scale manufacturers and of the manufacturers of various devices used in connection with track scales, and also that of several railroad experts from those systems which have given special attention to this subject. There are exhibits showing the ideal track scale and the method of its installation, but it would not be profitable to attempt to here discuss any of these matters of technical detail. It is only desired at this point to emphasize the necessity of a proper installation, without which the best scale can not be kept in proper condition or made to produce accurate results.

The standard track scale of to-day has a capacity of from 200,000 to 300,000 pounds. Its length, meaning the length of the track above the scale over which the cars pass, is from 40 to 52 feet. The commonest defect in the installation of the scale seems to be in the construction of the pit containing the scale itself. Not only should the foundations be sufficient, but the pit itself should be so constructed that it can be kept absolutely dry and can be readily entered for

purposes of inspection. When great accuracy is desired it should be kept at a uniform temperature.

Formerly the platform above the scale was attached to the scale itself, the track upon which the car stood being laid on the platform. With this system of construction the platform is very liable to bind at the edges, producing inaccuracy in weights, and the modern method is to support the tracks upon which the car rests when being weighed upon standards which pass down through the platform, so that the platform itself is stationary and not connected with the scale.

A second track is laid upon the platform so that the car, when the scale is not in use, may be passed over the scale without engaging its mechanism.

The cost of a modern track scale, installed, depends somewhat upon the location where the installation is to be made, and runs from \$3,300 to \$10,000, according to the size and quality of the scale.

The state of Oregon has recently employed an inspector of track scales, and we quote below from his first report to the railroad commission of that state:

In the forty scales that I have inspected I have found only one that I could pass without adjustment. This was a privately owned scale, which did not belong to any railroad. The scales inspected have varied from forty to twelve hundred pounds from correct weight; some have weighed heavy and others have weighed light.

Not a single scale in the lot was, in my judgment, originally properly installed. I found the main platform bearings out of place, and many scales have been found to be binding. There were all kinds of false bearings, levers were out of level, and connections not plumb; check rods too tight—in fact, I found about every possible defect that would cause a scale to give the wrong weight.

While conditions are improving, and while but little remains to be desired in the case of some few railroads, the above illustrates what is still true of a very considerable part of this country. This record leaves no reasonable doubt that a majority of the track scales now in use should be at once rebuilt in order to obtain reasonably accurate results. It is also apparent that many additional scales should be installed.

#### INSPECTION AND TESTING.

While a track scale is a strong and sturdy piece of mechanism intended to deal with heavy weights and to resist rough usage, it is, nevertheless, somewhat delicate and liable to get out of order. If the pit which contains the scale is damp the bearings rust and this interferes with the correctness of the result. If anything gets between the platform and the edge of the pit, in those cases where the weighing track rests upon the platform, the scale may bind.

Various disarrangements may take place in the mechanism of the scale itself.

A physical examination of the scale will frequently reveal defects of this character, and it is therefore essential, according to the testimony of all those who have given this subject special attention, that the scale should be kept as clean as possible and that a frequent inspection should be made by going into the pit of the scale. By such examination defects can be frequently observed and corrected. A track scale much in use should be inspected and balanced every day.

In the past, in the majority of cases, the subject of inspection seems to have received very scant attention. One witness testified that he regularly inspected the scale of which he had charge by looking through a crack in the platform, and this is a fair specimen of the manner in which that duty was often discharged. For this there is no excuse. It is not possible to have an expert in charge of every track scale, but if the scale is properly installed a person of ordinary intelligence can be readily taught to give it such care and examination from day to day as may be necessary, although this should be supplemented by an expert inspection at regular intervals.

While an inspection of this kind is necessary and should never be neglected, since it may reveal sources of error, the only certain way to determine whether a scale is accurate is by a weighing test of the scale itself. This test is made in various ways, but comes finally to the same thing, and consists in putting upon the scale a known weight and then comparing the reading of the scale with that weight. The weight may be and is applied in various forms, but the most approved method and the one most generally in use is by the test car.

For this purpose a car of short-wheel base, usually 6 feet 6 inches, is provided, so constructed as to vary as little as possible in weight. As a test car moves from point to point upon a railroad there is almost of necessity some slight change in its weight, due to various causes, like the wearing away of those parts which are subject to wear, the varying weight of the oil in the boxes, etc. It was said, however, that a proper test car, properly used, would not vary more than 50 pounds in a trip of two weeks.

The testing of the track scale, when a proper test car has been provided, consists merely in placing the car upon the scale and noting whether it weighs that car correctly.

In order to make certain of the correctness of the test car itself, access must be had to a master scale; that is, a scale which has been tested by standard weights obtained from the Bureau of Standards maintained by the United States Government. There should be one such scale upon every considerable railroad system.

Considerable was said at the various hearings as to the period which might properly elapse between tests of a track scale. Evidently much depends upon the care which is given the scale and the amount of work which is required of it. A scale subjected to continuous usage is, in the nature of things, more likely to wear out than one which is used much less frequently. The general opinion seemed to be, however, that all scales should be tested by the test car at least once in two months; in many cases every month.

Our investigations show that comparatively few railroads were, when this proceeding began, provided with proper test cars, and that in even fewer cases were those cars put to frequent and efficient use.

The railroad commission of the state of Minnesota is required by statute to weigh certain commodities, and has jurisdiction in that connection over the railroad track scales of carriers operating within that state. When that commission first began its inquiries into the accuracy of track scale weights and the operation of track scales generally by the carriers, no railroad in the state of Minnesota had a test car. The commission itself purchased one, and this has led the various carriers in that state to provide similar equipment for themselves.

Certain railroad systems, of which the Santa Fe and the Pennsylvania are good illustrations, have given special attention to the correct scaling of cars, and to this end have attempted to install suitable scales, to keep these scales in order, and to make certain that they are accurate. These railroads had at the beginning of our investigation test cars, but, broadly speaking, the test car was a thing, not unknown, but generally unused, and in a great measure this is still true.

One of the subjects most discussed in considering the testing of scales was the degree of accuracy to which a track scale should be expected to weigh. Track scales are usually constructed to read within 50 pounds; that is, one notch upon the scale beam represents 50 pounds. The representative of one scale manufacturing company testified that in his opinion a scale could not be said to be in good order until it would indicate the variation shown by a single notch upon the scale beam. Upon the other hand, many of the carriers were of the opinion that any such degree of accuracy in a track scale was, as a practical matter, unattainable.

We are satisfied that a modern scale, properly installed and kept in proper condition, should be accurate within at least 100 pounds, and that when under test it shows a variation of 100 pounds or more it should be considered out of order. It is not meant that the weight of the contents of a car can ordinarily be ascertained within 100 pounds by track scaling. Into that result many sources of error may



enter aside from the inaccuracy of the scale itself, but in our opinion that particular source of error should not exceed the limit above named.

#### OPERATION.

No matter how excellent the scale, how perfect the installation, or how painstaking the maintenance, if the operation be faulty the result is error. This record leaves no doubt that the methods employed in the use of track scales for the weighing of carload freight are such as would often produce gross inaccuracies upon the most perfect scales. These faults consist partly in the way the cars are placed upon the scales for weighing, and partly in the recording of the weight itself.

Cars may be weighed, and are habitually weighed, both in motion and at rest. They are sometimes coupled to other cars at both ends when weighed, sometimes coupled at one end, and sometimes entirely uncoupled. Different carriers have different practices in this respect, and frequently the custom is different at different points upon the line of the same carrier. Upon no subject involved in this investigation has the testimony been so sharply conflicting as upon this. May cars be weighed in motion, or must they be spotted? May they be coupled when weighed at one or both ends, or must they be entirely uncoupled? These are the storm centers around which the fiercest discussion has raged.

It would seem to be a self-evident proposition, and is the opinion of those witnesses who are best qualified to express one with no bias either way, that the ideal method of ascertaining the weight of a car is to place that car upon the scale, allow it to come to rest, remove everything from contact with it so that it stands alone upon the scale, and, having done this, take the weight. If the scales are accurate this will indicate upon the scalebeam the true weight of the car.

It is claimed, however, that as a practical matter no element of error is introduced if this car be coupled to other cars at one or both ends. Undoubtedly in many cases, perhaps in the great majority of cases, if a car were placed upon scales so arranged that this could be done, coupled at both ends to other cars, and allowed to come to rest, the weight would be substantially the same as though uncoupled. This clearly would be so unless there were some pull up or down at one or the other end of the car. But it is equally manifest that the possibility of error always exists if this car be attached to any other car by a coupling which is at all rigid or may be made rigid. The element of possible error is greater if the car be coupled at both ends than if it be coupled at one end.

The length of most modern scales is such that cars can not be weighed coupled at both ends, especially if the cars are of the smaller

sizes, since the scale is so long that the attached cars often stand upon one end or the other of the platform. The practice, therefore, of weighing cars coupled at both ends is not as common to-day as formerly; indeed, it seems to be at the present time comparatively rare when any serious attempt is made to accurately weigh the car. It is, however, still a very common practice to weigh cars coupled at one end, and the results of many experiments were introduced tending to show that no substantial error resulted from this method.

These experiments have for the most part been conducted by the carrier, but there is no reason to doubt that they were honestly carried out and that the results are correctly stated. Nevertheless, we are not prepared to accept the conclusion reached, and the reason why will be best shown by an examination of one of these tests.

The most extensive, and perhaps the most satisfactory of all tests of this character, was conducted by the Western Weighing and Inspection Bureau, and involved the weighing, light and loaded, of 10,000 cars in different parts of the territory covered by the operations of that bureau during various periods of the year 1912. The head of that bureau testified that he aimed to have this weighing done at points where competent weighmasters were in charge. The car was first placed upon the scales coupled at one end. After being weighed in this position it was uncoupled, so as to be entirely free, and again weighed. The weighmaster had particular instructions to see when the car was weighed that it did not bind at the point where it was attached to the other car. Since the only error which can arise by virtue of the fact that the car is coupled is due to its binding with the car to which it is attached, and since in most cases, if proper attention is given, no such binding will occur, it follows that the source of error from weighing in this manner was largely eliminated by the way in which the test was made. The real objection to this method of weighing cars is that unless the very greatest care is taken there will be an up or down pressure at the drawbar, and that, as cars are ordinarily weighed in actual practice, the necessary attention is not given. An element of inaccuracy is introduced which is not liable to be guarded against when cars are weighed coupled, but the possibility of which is entirely removed when they are uncoupled. The question is not, Can cars be accurately weighed coupled at one end? but, rather, Will they be so weighed as the operation is ordinarily performed?

An exhibit was filed giving the result as to each car, and an examination of this exhibit shows that in instances, although they are not numerous, marked differences occur between the coupled and the uncoupled weight. In one instance this difference was as great as 4,000 pounds. It appears, therefore, that even with the greatest

28 I. C. C.

care, errors may result from this method of weighing. This test, in view of the manner in which it was conducted, convinces us that cars ought not to be coupled at either end when weighed, if this, as a practical matter, can be avoided; and that is also the fair inference from the entire record upon this point.

Some few railroads still weigh cars in motion when coupled at both ends; that is, the train is drawn slowly across the scale and the weight of each car observed during its passage. This method of weighing aggravates all the errors and sources of error which would be present if the car were spotted while coupled at one or both ends. While some of the witnesses introduced tables showing the result of experiments tending to prove that this method of weighing was accurate, the opinion of most of those qualified to form one, and the practice of all railroads where this subject has been given careful attention, condemns the weighing of cars in motion when coupled at both ends. That system of weighing may be fairly designated as a relic of the dark ages of track scaling.

Many railroads have constructed at very great expense the most approved track scales, with a special view to weighing cars in motion. The best of these scales are provided with an arrangement called a mechanical hump, by which the car is slightly elevated and set in motion over the scale. By this method a uniform speed across the scale is obtained. The car is absolutely disconnected from all other cars, and experiments appear to show that when the scale is properly constructed and properly operated accurate results can be obtained. It would seem to be, in the nature of things, impossible to weigh a car while in motion with the same nicety that it can be weighed at rest, but it does appear that substantially accurate weights can be obtained in this manner.

In actual life the ideal is not always attainable, and in practical railroad operation it may not be possible to weigh loaded cars by the most perfect method. The time and expense involved in these different methods of weighing must be considered. The testimony tends to show that there are instances where cars can only be weighed in motion and that there are other instances where it would impose a very serious burden if they were to be in all cases uncoupled. This record does not show the expense of weighing a carload of freight. The opinion was expressed by one witness that it would cost 80 per cent more to weigh cars uncoupled than to weigh them coupled at one end. To-day it is not so much a question of additional expense as of additional facilities. To require all cars to be spotted for weighing would render very extensive changes necessary at points where they could not well be made.

Our general conclusion is that cars should never be weighed in motion coupled at both ends, that they may properly be weighed in motion when uncoupled upon scales especially designed for that purpose and in charge of thoroughly competent men; that cars should not ordinarily be weighed coupled at one end, and never unless at points where the greatest attention is paid to the condition of the scale and the competency of the weighmaster.

The second source of error in the operation of track scales lies in the observance and recording of the weight actually registered by the scale. It is necessary for the weighmaster to identify the car, that is, to take its initials and number, to ascertain the net tare weight stenciled upon the car, and to also ascertain and record the weight of the loaded car, as shown by the scale beam. When the car is spotted and uncoupled there is usually sufficient time for doing this with care, so that only occasional error results; but when the cars move across the scales with comparative frequency the liability to error is very much increased. So great is this liability, and so many errors arise from the personal infirmity of the operator, that much thought has been given to the perfection of devices which shall eliminate this source of mistake. There are to-day two general classes of instruments for this purpose—the automatic and the mechanical self-registering device.

The automatic device is attached to the scale beam, and stamps upon paper, without the intervention of any human agency, the weight of the car as it would be recorded upon the beam itself. The only duty of the weighmaster is to identify the car of which the weight is taken. Assuming the device to be perfect in operation, the only liability to error arises from applying the weight recorded to the wrong car.

With the mechanical self-recording device the operator observes the scale beam as the car passes across the scale or comes to rest upon the scale. When the beam is balanced he throws a lever-engaging mechanism, which records the weight as shown by the scale. Here the human element is present, since the operator must observe the moment at which the scale balances and throw the lever of the recording contrivance. The weight is recorded as of the moment when the lever is thrown, so that an error in observing the scale beam or in pressing the lever results in an erroneous weight.

The advocates of these two contrivances have each much to say in favor of his invention. Scale makers who do not as a rule own the self-recording mechanism and who apply whatever one is desired generally agree that some device of this kind should be used, and such seems to be also the impression of most railroad men of experience in these matters. There is, however, no agreement as to what device

is the best. If the automatic contrivances were absolutely reliable they would be superior, since the element of human error is entirely excluded, but the testimony indicates that this device is not absolutely reliable, or, at least, only within certain limits. Upon the other hand, it is conceded that the mechanical self-recording instrument gives with absolute accuracy the weight shown by the scale when the contrivance is put in action by pressing the lever.

Of 4,601 scales installed upon 93 of the principal railroads of the United States 1,124 are equipped with the self-recording and 157 with the automatic device. It is significant that the Pennsylvania Railroad Company, at its Juniata scale, which is maintained in the highest possible state of efficiency and over which more cars are probably weighed annually than upon any other scale in the United States, after having tried both devices has discarded both and now weighs by hand. The reason given by the expert of that company was that at that scale the automatic instrument was not sufficiently accurate and the self-recording too slow.

We wish to carefully avoid any apparent expression of approval or disapproval of these rival instruments. Much must depend upon the conditions under which the service is to be rendered, and there is nothing in this record from which an opinion could properly be formed. What we desire is to impress the thought that it is just as essential to provide a competent operator as to furnish a suitable scale, and that so far no device has been invented which will dispense with intelligence, faithfulness, and ability upon the part of that operator. The weighmaster must be as fit as the scale, a truth too often overlooked at the present time.

#### TARE WEIGHTS.

The weight of the contents of a car is determined by subtracting from the weight of car and contents as shown by the scale the tare weight as stenciled upon the car. In some few instances the car is weighed both loaded and light, but in the great majority of cases this is impossible and the stenciled tare must be used. It is evident that even though the scale weight be accurate the result is error unless the tare weight of the car is also correct.

The tare weight as stenciled is given in multiples of 100 pounds, and the stenciled weight is treated as correct unless the test shows a variation of more than 100 pounds from the marked tare. Under this definition of correct probably at least 80 per cent, and very likely 90 per cent, of all stenciled tares were at the beginning of this investigation inaccurate. A great amount of testimony has been introduced upon this point, and pages might be filled with tables showing the results of actual tests made both by shippers and by carriers, but this

would be unprofitable and is unnecessary. Minnesota is one of the few states in which the railroad commission exercises an actual supervision over track-scale weighing. The commission of that state conducted an exhaustive series of tests as to the accuracy of tare weights. There is every reason to believe that these tests were fairly made; the results accord with the general import of other tables introduced, and some of these results may be referred to as illustrative.

Between April 16 and August 15, 1912, 10,967 cars were lightweighed. These cars were not especially selected but were all the cars which were unloaded during that period at certain points. No special pains were taken to see that the cars were clean or that they did not contain foreign substances. The cars were simply weighed under load and again weighed when unloaded in the same condition that they were received by the railroad and would be put back into service or delivered to another shipper for loading. They had contained just previously grain, hay, straw, or coal. About three-fourths had been loaded with grain.

Of these, 6,254 weighed more than the stenciled weight. The variation was all the way from a few hundred to 9,000 pounds, the average being 461 pounds to the car; 4,207 weighed less than the stenciled weight, the variation being as high as 6,000 pounds, and the average 548 pounds; 506 cars out of the total number were correctly stenciled.

It has been said that the above cars were weighed without any special attempt to see that they were free from foreign substances, the purpose being to weigh the car as it would be delivered by the railroad to a shipper for loading and might be loaded by him. Special pains were, however, taken with 3,516 of these cars to see that they were clean and contained no foreign matter which could increase the weight. The result of this was that 1,374 weighed more than the stenciled weight by an average of 352 pounds to the car, 1,778 weighed less than the stenciled weight by an average of 531 pounds to the car, while 364 cars were accurately stenciled.

The Minnesota commission weighed many other cars at other times. The general result of most other experiments would show a greater variation than the figures above given, but we have selected these as made in the manner which, all in all, seems to be the fairest. The conclusion which should fairly be drawn from everything said upon this investigation is about that indicated by the above figures.

Some of the causes of this erroneous stenciling of tare weights can be readily assigned.

Most cars are of wood, or contain more or less wood. Such cars shrink in weight when put into service. This record does not show, nor in the nature of things would it be possible to show, exactly what

such shrinkage amounts to. Plainly it must vary with the type of car and with the condition of the material out of which the car is constructed, but, generally speaking, it may be assumed that if the stenciled weight represents the actual weight when the car is weighed for stenciling at the point of manufacture, that car will weigh less at the end of six months or a year.

The use of the car necessarily wears away certain parts of the material, and this produces some decrease in weight. Beyond a certain point, when parts begin to be restored, this tendency to decrease ceases, so that if a car were weighed in its normal condition two or three years after being put into service but little further decrease in weight on that account would take place.

The repairing of cars tends to vary the weight. This is partly due to the fact that new parts are supplied in place of old parts, which have become worn, but mainly because the new part is frequently of a different type, which is heavier than the old type, as, for example, the insertion of a new drawbar or the application of a new brake beam. It seems probable that many of the most marked variations between the stenciled and the actual tare of the car are due to this cause.

It is evident that no proper appreciation has been had of the importance of accurately stenciling the tare weight of cars. In some cases cars have been purposely stenciled above or below actual weight. In numerous cases no tare weight whatever is given, and several instances were reported where the stenciled weight upon one side of the car was different from that upon the other.

It is probable that there may be some variation from week to week in the weight of the same car, especially when the car is made of wood. If the car is old and not thoroughly painted it will absorb a considerable amount of moisture. The opinion was expressed, although not supported by any actual test, that the tare weight of cars would vary as much as 1,000 pounds, according as the weather might be dry or wet.

It should also be noted, and this is a matter of great importance, that cars when loaded contain foreign substances. The previous load has not been properly cleaned out so that several hundred pounds are in the car when the new lading is made. It may sometimes be the duty of the shipper and sometimes of the carrier to clean this car, but evidently failure to do so may frequently result in errors of weight.

It also happens that during the winter months cars are covered with snow, which adds to the gross weight of the car.

There was considerable argument during the various hearings as to when the shipper and when the railroad benefited by the fact that

the actual light weight differed from the stenciled tare. This question is most easily answered by stating the figures in a given case. Let it be assumed that the gross weight is 120,000 pounds, the actual light weight 40,000 pounds, and the stenciled weight 38,000 and 42,000 pounds, respectively. The actual weight of the contents of the car, as compared with the weight ascertained by using the stenciled tare, is shown below :

$$120,000 - 40,000 = 80,000$$

$$120,000 - 42,000 = 78,000$$

$$120,000 - 38,000 = 82,000$$

It will be seen, therefore, that whenever the stenciled weight is greater than the actual weight the shipper pays upon less than the actual contents of the car, while, when the stenciled weight is less than the actual weight the shipper pays on more than the actual contents; that is, when the car weighs more than the stenciled tare the shipper loses, while when the car weighs less than the stenciled tare the shipper gains.

The carriers assert that inasmuch as the tendency of a car is to lose weight most cars will weigh less than the stenciled weight, and that therefore in the past the shipper on the average has been the actual gainer and the carrier the loser. Upon the contrary, the shippers urge that, whatever might be expected, in point of fact cars as a rule actually weigh more than the stenciled weight, and that therefore the shipper has been the loser. Tables introduced by both parties tend to confirm the position of the one introducing the table. But all this is beside the mark. It is no satisfaction to one shipper who has paid on from one to five thousand pounds more than he should to be told that some other shipper has paid upon that much less, or that he himself may sometime be equally fortunate. Some method should be devised by which actual, not average, weights can be ascertained. To-day the most prolific source of error in ascertaining the correct weight of the contents of a car by track scaling is found in the fact that the actual light weight does not at the time of the weighing agree with the tare stenciled upon the car.

#### THE WEIGHING OF SPECIAL COMMODITIES—GRAIN.

Grain usually moves from the field to the country elevator and from the country elevator to some primary market. Presumably the grain is weighed at the country elevator, where it is received from the producer, but the manner of these weights and their effect is not detailed in this record. At the primary grain market it is usually weighed by some elevator. As a rule, the scales and weigh-master of this elevator are under the supervision of a chamber of commerce, or, sometimes, of the state or municipality itself.



Generally speaking, these elevator weights are accepted by all parties in the merchandising of this grain, and are also accepted by the railroad in assessing its freight charges, although it appears that in some instances railroads rely for their charges upon track-scale weights.

Elevator weights are usually accurate, and comparatively little complaint has been received from the handlers of grain of erroneous weights. In one or two instances complaints have been registered that the quantity of grain weighed out of the car does not correspond with the amount of the invoice, which is also the amount upon which freight charges are assessed.

Flour and other grain products are usually shipped in packages containing a certain number of pounds, and the weight of the contents of the car is ascertained for the purpose of assessment of freight charges by counting the number of packages. If there are instances where track-scale weights are used in assessing freight charges against grain products, that has not been brought to the attention of the Commission.

Generally speaking, at the present time, but little complaint exists as to the weighing of grain and grain products.

#### COMPLAINT OF CHICAGO BOARD OF TRADE.

Reference may be here made to a matter presented to the Commission by the Chicago Board of Trade.

Owing to the great extent of the city of Chicago and the location of the different elevators within that city, it is not feasible to receive all grain which is intended for city consumption from the elevators. A very large amount of grain must be unloaded upon team tracks, and the present practice is to weigh this grain in the wagon upon platform scales.

These scales are owned and operated by the railroad, and shippers allege that the weights so ascertained are not accurate.

The reason for this was found by the witnesses in several circumstances.

It was said that the grain in being unloaded from the car into the wagon was almost invariably spilled to a greater or less degree, so that a distinct loss in weight occurred from this cause between the car and the scale.

It was also said that the scale was carelessly and improperly operated by the railroad employee and that it was not properly tested and inspected.

There was the still further allegation that proper supervision was not exercised by the weighmaster in observing whether the wagon

contained the same number of persons or the same person when weighed empty and light.

The result of all this has been that cars unloaded upon the team track and weighed in this manner invariably show a considerable shortage. The average amount did not appear. This in turn has created a prejudice against the team-track market, so that grain habitually sells for less, frequently for as much as 2 cents per bushel less, when for team-track delivery than when for elevator delivery. Those merchants in Chicago who operate through the team-track delivery urge that these conditions are burdensome and should be removed.

It was stated in behalf of the Chicago Board of Trade that that organization was willing to take over the inspection and operation of these scales, and the desire of both shippers and commission men seemed to be that this arrangement should be made. The thought was expressed that under such an arrangement a close supervision could be exercised not only over the weighing but over the unloading of the grain itself.

The railroads at the present time make a charge of 10 cents per load for this weighing service, and the board of trade would expect if it took over the operation of these scales to make and retain this same charge. It was stated that a considerable deficit would undoubtedly occur to the board of trade notwithstanding this arrangement, but that that organization was willing to undertake this task, just as it now supervises the weighing of all grain handled through elevators in the city of Chicago, inasmuch as certain members of the board dealt in this team-track grain.

It is evident that there is usually a shortage in the weight of cars of grain unloaded upon these team tracks, and this seems to be due partly to carelessness in the handling of the grain and partly to improper scaling. For negligent unloading of the grain the carrier is not responsible, but for the weighing it is. It occurs to us that the board of trade might well be given jurisdiction over these platform scales, which are extensively used for the purpose named, in the same manner that it has jurisdiction over all other scales by which grain is weighed in that market. This certainly would relieve carriers from all criticism, and might incidentally enable the board of trade to exercise some supervision over the handling as well as the weighing of the grain in the interest of its members.

Something was said as to the reasonableness of the charge imposed by the carriers for the weighing, but the Commission can make no order touching that matter in this proceeding, and will not therefore express an opinion.

## COAL.

The tonnage of coal exceeds that of any other commodity, and the proportion which the freight charge bears to the value at destination is greater in case of coal than with any other article of general consumption. The weight ascertained by the carrier upon which freight charges are computed is usually the weight used by the mine owner in billing to his customer. It is therefore especially important that the weight of this commodity should be correctly ascertained.

There is a great variety of method in the weighing of coal. A representative of the Louisville & Nashville stated that upon his line the mines as a rule owned no scales, the coal being weighed upon scales owned and operated by the railroad. These scales are not at the mine but are usually in close proximity, and it was said that coal is seldom hauled 50 miles before being weighed. The weight is communicated to the mine owner, who accepts it as correct and invoices his coal upon that basis. This witness testified that upon the Louisville & Nashville coal was weighed in motion, with the cars coupled at both ends, and that both the railroad and the mine owner declined to vary from the weight so ascertained.

This witness stated that the method pursued upon the Louisville & Nashville was that ordinarily in use in territory south of the Potomac and Ohio and east of the Mississippi. He did not say definitely, however, whether the ordinary rule was to weigh cars in motion and coupled, as upon his line.

It frequently happens that coal is not weighed until it has moved a considerable distance from the mine. The Norfolk & Western weighs its coal for central freight association territory for the first time at Portsmouth. Tidewater coal at Norfolk, Baltimore, etc., is weighed at the port, and the weight so ascertained governs. Perhaps in the majority of cases the coal is weighed at the mine, either upon scales owned and operated by the railroad or upon those installed by the mine owner, but operated under the supervision of the railroad. In the anthracite regions the scales are located near the collieries, but seem to be uniformly owned and operated by the railroad.

Ordinarily the car is not light-weighted before being loaded, but sometimes it is, and this seems to be the rule in the anthracite regions. In all cases the weight of the coal, when ascertained, is communicated at once to the mine owner, if not already known, and is the weight upon which the coal is sold and the freight charges are assessed. Both the mine owner and the railway insist upon these weights as ascertained at the point of origin.

More complaint exists as to the weighing of coal than with any other commodity except lumber. The oft-repeated allegation was

that the coal did not weigh out up to the billed weight, the shortage being from a few hundred to several thousand pounds. There was an earnest demand for some change in the system of weighing coal, which usually resolved itself into a demand for destination weights.

It is manifest that this Commission can have no control over the contract between the coal producer and his purchaser. If the mine producer insists that his contract of sale shall provide for mine weights, we can not control that action. We can, however, see to it that freight charges are assessed upon actual weights, and that the rules under which those weights are ascertained are correct.

The weight of coal at destination does not necessarily correspond with its weight at the mine. If coal is not properly trimmed when loaded it is liable to fall from the car during transportation. Coal is also subject to extensive pilfering en route, being ordinarily shipped in open cars, frequently through sections which are densely populated, and being an article of universal necessity. We have nothing before us from which any reliable estimate can be made as to the amount of loss due to the falling of coal from cars en route or to pilfering.

There may also be a substantial change in weight between the time the coal leaves the mine and its arrival at destination, due to evaporation. The coal is frequently wet at the mine in the process of mining or preparing for shipment, and the drying out of the water lightens the weight of the car. In case of washed coal an allowance on this account is frequently made. The coal itself as it comes from the mine sometimes contains considerable quantities of moisture, so that a carload of coal, like a carload of lumber, would lose in weight by drying out if it stood in the hot sun or was kept for any length of time in a dry climate. An account was given of some experiments which tended to show that with certain western coals standing in open cars in the hot sunshine for 25 days the loss in weight owing to evaporation of moisture was from 4 to 22 per cent. Other coals lost 2 per cent in 10 days and 4 per cent in 25 days. It can hardly be expected, therefore, that the weight at destination would exactly correspond with the weight at the mine, but there ought to be some fairly uniform percentage of shrinkage according as the coal is produced in various sections and moved under various conditions.

It seems proper for a railroad company to provide in its tariff that the weight as ascertained at point of origin shall govern, unless shown to be incorrect within such measure of tolerance as may be properly fixed. Where the commodity varies in weight during the transportation it may provide that the weight so ascertained shall govern irrespective of the destination weight. It can not, however, provide that an incorrect weight, no matter when ascertained nor where ascertained, shall control. If that weight is shown to be in-

correct it must give way to one which is correct. If, for example, the nature of the coal is such that in course of transportation its weight will not vary, and if the carload at destination does not weigh in fact what it is said to have weighed at the point of origin, this must show conclusively that the weight at the point of origin was incorrect, assuming always that the destination weight has been so ascertained as to leave no doubt as to its correctness.

Where coal is wet in process of preparation for shipment so that the moisture does not become at any time a part of the coal itself but soon evaporates, there would seem to be strong reason why a proper deduction should be made from the weight as ascertained at the mine. When the moisture is a part of the coal itself, even though it subsequently evaporates, the carrier may properly require that the weight at the mine shall govern. When coal falls from the car or is lost by pilfering the carrier ought to be held responsible, since the falling from the car is due to improper loading and the pilfering is a loss against which the railroad must stand responsible.

The difference in conditions in different parts of the country and of different coals is such that no general rule can be laid down. In our opinion, if some method can be adopted by which the weight of the coal at the mine is accurately ascertained and by which proper loading can be secured, the greater part of the present complaint, so far as it is well founded, will disappear. There should probably also be the right upon the part of the shipper to demand a reweighing of this and every other commodity under proper restrictions. When possible, the car should be weighed light before being loaded or after being unloaded.

#### LUMBER.

Lumber is generally sold by the thousand feet, and the weight is not therefore an item of significance in determining the invoice price. The freight rate is, however, a very important part of the value of the lumber at the point of final destination, being frequently nearly as much as the lumber itself in case of the coarser grades. It is therefore a matter of great importance to all parties concerned that the weight upon which the freight charge is assessed should be accurate.

The rate of freight upon lumber is almost uniformly named by the hundred pounds, and the weight upon which that freight is assessed is universally determined by track-scale weight. The car is weighed at the point of origin, or as near as possible to that point, and the weight so established governs unless corrected. Almost all shipments of lumber are weighed a second and frequently a third time, and the allegation of lumber shippers is that if these subsequent weighings show more than the original weight the weight is

advanced, while if they show less no change is made in the original weight. While this was denied by the carriers, the evidence indicates that in many cases at least the claim is correct.

More complaint has been received touching the weighing of lumber than with any other commodity, and perhaps more difficulty is experienced in the settlement of claims filed with carriers by shippers on this account than in case of any other commodity. Some of the reasons are these:

Different kinds of lumber differ greatly in the weight of a thousand feet. The same kind of lumber in the same state of dryness does not always possess an absolutely uniform weight, and it is common knowledge that green lumber shrinks greatly in weight in the process of drying. Thoroughly dried lumber, if exposed to the atmosphere, especially if exposed to the elements in an open car, will absorb moisture and increase materially in weight. Lumbering operations are often conducted in northern latitudes where snowfalls are frequent during the winter. The accumulation of snow and ice upon the car adds to its weight and thereby tends to increase the weight of the car beyond its stenciled capacity.

Many carriers, realizing the imperfections of the scale weights, have been accustomed to recognize claims for errors in weight very readily. The shipper would state that so many thousand feet of a certain kind of lumber of a certain state of dryness had been shipped, and that this lumber in that condition would weigh a certain amount per thousand feet. Upon this basis the alleged overweight was corrected.

Upon the other hand, some carriers have insisted that scale weights must govern and that they would under no circumstances correct an alleged mistake in weight upon the basis of an estimated weight. The varying practices of different railroads in this respect have led to friction between carriers and shippers and have undoubtedly resulted in discrimination as between different shippers, and certainly as between different railroads. It seems clear that some method should be devised by which the true weight of this commodity can be more accurately ascertained.

#### GENERAL RULES.

Under this title reference will be made to certain rules and practices of the carriers, the effect of which is to exempt large amounts of carload freight from all weighing whatever. Railroads have generally organized weighing and inspection bureaus possessing jurisdiction over certain territorial limits. One of the duties of these bureaus is to supervise and correct the weighing of carload freight. These bureaus enter into an arrangement with certain shippers by

28 L. C. C.

which the weight certified by the shipper to be correct is so accepted by the carrier. The agreement is in writing, and provides that the shipper shall furnish a correct weight, that he will pay any additional charges which may be due owing to the underweight if the weight furnished by him is subsequently corrected, and agreeing to allow the carrier at all times access to all records, invoice books, and papers of the shipper pertaining to the weights of the cars shipped.

These agreements cover package freight put up in standard packages where the weight is determined by counting the number of packages shipped in a particular car. They also cover freight which must be weighed ordinarily in the car by some one. This weighing is done upon the scales of the industry, which in such cases are under the inspection of the weighing bureau, and may at any time be tested by the representative of that bureau. It sometimes happens that the bureau itself appoints the weighmaster, who is paid by the industry.

The checks possessed by railroads against underweighing by this practice appear to be twofold.

In the first place the weighing bureau frequently reweighs such cars, comparing the result of such reweighing with the weight as furnished by the shipper. While this is not an accurate test, since the weight as given by the shipper in the absence of intentional fraud would generally be more accurate than that obtainable by the railroad from ordinary weighing upon track scales, still it serves in a rough way to check the correctness of the shipper's weight.

Secondly, and in the main, the representative of the weighing bureau may at any time examine the books and records of the shipper, and by this means can usually determine whether the amount charged against the customer corresponds with the amount rendered to the carrier.

The present investigation has not been of a character to develop any fraudulent practices which may exist under this system. We have endeavored to ascertain whether complaint of discrimination exists, either on the ground that the privilege is accorded to some and denied to others or in the administration of the agreement itself. No such instance has been found. Apparently the special agreement is extended to all shippers who desire to execute it in certain lines of business and under certain circumstances without distinction. On the whole, so far as we have been able to obtain information, this system is satisfactory to shippers and, if honestly conducted, tends to secure more accurate weights than could be secured by the ordinary methods of track-scale weighing.

These special agreements are not, apparently, referred to in the tariff, but all the inspection bureaus publish lists of the individuals,

firms, or industries with whom such agreements are in force, so that the public is reasonably informed of what is taking place. Where such an agreement is in force in one weighing district, the weights as furnished by the shipper are ordinarily but not uniformly accepted in other inspection districts. Of course, the bureau in the district where the traffic originates or any carrier in any other district is free at all times to examine into the correctness of the weight of a particular shipment, and if found incorrect to advance the shipment to its true weight, and this seems sometimes to be done.

Two or three general rules incorporated in the tariffs of the carriers refer to weighing and have been made the subject of complaint. The first of these is what is known as "tolerance."

It will be readily appreciated that the exact weight of the contents of a car can not be ascertained by the use of track scales. We have already seen that the scale itself should be regarded as accurate until an error of at least 100 pounds is shown. We have further seen that the tare weight of the car is stated in multiples of 100 pounds, and is treated as correct until an error exceeding that amount appears. It has also been noted that some of the coarser commodities which are most frequently the subject of transportation shrink several hundred pounds in transit. From these and other causes it is admitted on all sides that there must be a limit of error within which the ascertained track-scale weight of a carload of freight shall be deemed to be correct. This limit is known as tolerance, and is in most jurisdictions 500 pounds, but in the jurisdiction of the Western Weighing Association and Inspection Bureau, which covers most territory on the west of the Mississippi River and east of the Pacific coast states, is 1,000 pounds.

In our opinion 1,000 pounds is too great. In case of a commodity which only loads 20,000 pounds to the car, and there are many such, it means a twentieth of the entire loading. This is a very significant item in the assessment of the freight charges, and is even more significant when the question is whether the carrier has delivered the full carload to the consignee. Even in case of coarser commodities like lumber and coal weight should be more accurately ascertained than is contemplated by this measure of error. If one tolerance is to be fixed for the weighing of all commodities, 500 pounds would seem to be large enough.

It has been suggested that the measure of tolerance should vary with the character of the commodity transported. Evidently accuracy in the matter of weight becomes important in proportion to the value of the article, when the question is as to whether the entire carload has been delivered, and in proportion to the amount of the rate, when the question concerns merely the assessment of freight



charges. No workable rule has, however, been suggested upon this basis; on the whole there seems to be among shippers very little objection to a tolerance of 500 pounds, and we think this may fairly be regarded as reasonable.

In saying this, however, we have in mind only those articles which have been referred to in this investigation, and the expression of this opinion is not to be taken as covering commodities and conditions not before us.

One instance has come to the attention of the Commission where the tariff of the carrier provided that the weight ascertained upon a particular scale should govern, and it is frequently provided that weights at points of origin will govern.

Tariffs of this character are unreasonable. The shipper should be required to pay upon the actual weight. To assess freight charges upon any other than the actual weight is to impose a rate either too high or too low and to discriminate between different shippers. A carrier may not provide that the weight of a particular scale shall govern, whether that scale be accurate or inaccurate, for the question is always, What is the actual weight of this shipment within reasonable limits as above indicated?

Neither is it proper to provide that weights at either the point of origin or the point of destination shall govern, unless those weights are correctly taken; that is, such a tariff would be unreasonable unless the shipper were permitted to show by reweighing or by other means that the weights at the point of origin were inaccurate.

Neither can the carrier by this means exempt itself from liability to the shipper for loss of property in transit. He can only properly provide against that variation in weight which may actually be supposed to occur during the transportation and for such measure of possible error as is reasonable in the premises.

Another rule of the carriers provides that where a shipper asks for the reweighing of a carload of freight he shall pay 50 cents, where the weighing is upon the scales of the shipper, and \$1 where the weighing is upon the scales of the carrier. Shippers object that where the weighing is upon the scales of the shipper no additional charge should be made in any event, but the carrier is obliged to spot the car and it can hardly be said that a charge of 50 cents for this service is unreasonable.

It is further objected that no charge whatever should be made when the weighing is rendered necessary by the act of the carrier; that is to say, if the shipper asks that the car be weighed because it is his belief that the original weight was improper, he ought not to be required to pay for the reweighing if it turns out that he was correct. The tariffs of some carriers now contain a rule to that effect, and in

our opinion the tariffs of all carriers should provide that where a reweighing is requested by a shipper and such reweighing shows error beyond the limit of tolerance fixed no charge shall be made for that service.

#### REMEDIES.

The ultimate purpose of this proceeding was to correct, in so far as might properly be done, such faults as were revealed, and the final inquiry is, To what extent and by what means can the defects in railroad track scales and their use which have been exhibited by the evidence in this record be remedied?

At the outset it may be observed that, while this investigation has occupied much time and has been conducted at considerable expense, the results already accomplished much more than justify the outlay. It became evident upon the very first hearing that the matters under consideration had never received proper attention at the hands of the carriers. The importance of the subject had not been appreciated. In the hurry and press of other things, scales had been overlooked. No sooner was the matter mentioned than railroads in all parts of the country realized that they were exceedingly vulnerable at this point, and the process of betterment at once began.

What has happened in case of one important system is an apt illustration. The reputation of that company for excellence in maintenance and operation is among the best, yet it appeared that in the matter of track scales it was deficient. Its scales were few in number, improperly installed, and inefficiently operated. It would seem that the management of this great company had for some unaccountable reason overlooked the importance of this basic subject; but no sooner had these conditions been revealed than all this was changed. A department having charge of this subject has been created with a competent man at its head and with the means to do what is necessary. Old scales are being improved, new scales are being installed, test cars have been contracted for and will be put into regular service. In the near future it seems evident that the track scales of that company will comport with the balance of its structures and their operation will be on a plane with the rest of its operations.

What has taken place upon that line is taking place, usually in a less degree, upon many lines. Returns which carriers were required to furnish show that those companies whose scaling devices were defective—and that includes the greater part of the railroad mileage of the United States—are generally installing new scales and rebuilding those now in service. New rules have been adopted for the lightweighing of cars, and there is everywhere evidence that if nothing

further were done, very material improvement would be made. There are, however, many railroads which will not be disposed to bring their scale equipment up to a proper state of efficiency.

It is not to be expected that all the railroads of this country will be equipped with theoretically ideal scaling devices. To require this would be unreasonable, but such devices are among the most important of the appliances of a railroad, for they virtually determine the charge which the shipper is to pay and the railroad to receive.

The cost of installing a track scale is not extravagant, only a few thousand dollars to a single scale; the maintenance of the scale when installed is not costly, nor does its operation involve the employment of highly paid expert labor. In view of the importance of the subject and the comparative ease of proper attainment, it is not unreasonable to require, by mandate of the government if necessary, that the railroads of this country provide reasonably accurate track scales and maintain and operate those scales with reasonable efficiency and accuracy. How is this end to be secured?

The first thing is to secure the proper installation of a proper scale, and, when once installed, the maintenance of that scale in proper working condition. This will be done in many cases by railroads of their own accord, for it is as important to them as to the shipping public that the scales by means of which their freight charges are determined should be accurate. But it is not possible to rely entirely upon voluntary action. In some form governmental authority must be able to require what is not voluntarily done. There are few, if any, municipalities in our whole country where the government does not in some form test and supervise the scales used for commercial operation. It is just as essential, in some respects more essential, that this should be done as to railroad track scales, since the weighing is almost never in the presence of or under the direction of the shipper affected by it, and an error of weight is often unnoticed, and if noticed most difficult to substantiate or correct.

Assuming that in some form the government must exercise authority over the installing and the testing of track scales, should this be done by the state or by the nation? It is evident that this duty is eminently local in its character. So far as the states see fit to undertake this work it can perhaps better be done in that way than through the exercise of federal authority, and the different states should be encouraged to assume and exercise an actual jurisdiction in this particular.

At the present time some few states do this. The Railroad Commission of Minnesota is directed by statute to weigh the hay, straw, and grain which is sold in that state, and, incidentally, is given authority over the installation, maintenance, and operation of rail-

road track scales. That commission, in the exercise of this jurisdiction, has done most excellent service. The same is true of the states of Oregon and Washington, and to some extent of other states. Numerous states have invested their commissions with this power, and undoubtedly it will be exercised to a much greater extent in the future than it has been in the past.

It is not probable, however, that this will be done by all states, and it will therefore be necessary for the federal government to exercise its authority in many cases. In our opinion some federal tribunal, perhaps this Commission, should be given authority in the following respects:

(a) To fix the points at which track scales shall be installed; (b) to prescribe the standard of such scales and their installation; (c) to test or supervise the testing of such scales; (d) to supervise the operation.

It is not suggested that the federal authority should actually test all the track scales of this country, much less provide the necessary apparatus for that purpose. The statute should require carriers themselves to install proper scales and properly maintain and test them, and should invest the federal tribunal with authority to make necessary rules and regulations to the securing of this end. The government should determine the kind of apparatus with which these scales are to be tested, the manner of the testing, the frequency with which the test shall be made. It should require a report of such tests and should have authority to make and supervise tests when it saw fit. The expenditure of a comparatively small amount of money would secure the installation and maintenance of adequate scaling facilities upon the railroads of the United States, and it is doubtful if a given amount of money could be more profitably expended in any other way in the regulation of these public agencies.

After the proper installation and maintenance of track scales comes their proper operation, since error may and does frequently result from this source. It has been already observed that there are two sources of such error, of which the first is the improper placing of the cars for weighing. Here, as in the installation of the scale, most railroads may be relied upon to see to it that cars are properly placed, but if the full benefit of an accurate scale is to be had the government must be able to prescribe the manner in which that scale shall be operated. To this end it must have authority to lay down general rules for the placing of cars when weighed; that is, to determine whether they shall be weighed in motion or at rest and whether they shall be coupled at one or both ends or entirely disconnected from other cars. The opinion has been expressed that upon a scale properly constructed and under proper conditions of operation

motion weighing may be done with practical accuracy, and the authority should therefore extend to the prescribing of the particular cases, or rather the particular classes, of scales upon which cars may be weighed in a given manner.

The second source of error is in properly balancing the scale and in transferring the record from the scale, and this depends upon the person who does the weighing. To what extent should the weighmaster be under government direction?

We have seen that elevator weights of grain are usually accepted not only for the assessment of freight charges, but in the merchandising of the grain itself. As a rule the weighmasters in elevators are appointed by some chamber of commerce, municipality, state, or other public authority, it being recognized that where the weights are to be accepted and acted upon by persons who can not be present at the weighing the weighmaster ought not to be an interested party, but should rather be a representative of public authority. It is our impression that, while the weighmaster is appointed by some public authority, he is usually paid by the individual requiring his services.

We have seen that the carriers themselves form associations for the supervision of the weighing of freight. This is partly for convenience and partly to prevent discrimination by improper collusion between railroads and shippers. These associations appoint the weighmaster, even though his services may be paid for by some individual railroad company or some industry.

If the government is to supervise railroad scales with a view to obtaining accurate results, the authority must extend not only to the scale but also to its operation, and in that the weighmaster plays the most conspicuous part. We do not suggest that all weighmasters should be appointed or licensed by the government, but we do think that there are points at which, and perhaps circumstances under which, official weighmasters should act, and that the power should exist to appoint such persons and determine their sphere of action.

We have seen that one of the most prolific sources of error is the wrong stenciling of the tare weight of cars. A car may undoubtedly vary somewhat in weight from week to week, according to climatic conditions, and therefore, when possible, the car should be weighed both light and loaded at that end of the route at which the weight is to govern. This, however, in the great majority of instances is impossible. The stenciled tare weight must be accepted, and it is extremely important that this weight should be as accurate as possible. While the stenciled weight never can be made absolutely accurate, there is no excuse for the wide element of error which now exists.

It is apparent that the only means of correcting an erroneous stenciled weight is by a proper reweighing of the car, and carriers generally concede that if it were practicable a reweighing ought to be had at certain definite intervals. Some railroads have to-day in effect a rule requiring all cars to be reweighed, usually within a period of two years, but such rules in the past have been mainly honored in the breach. It is insisted that no similar rule can be properly observed, since no carrier under the system of car exchange now in vogue can hope to have upon its road every two years its entire car equipment.

If it be assumed that cars can only be weighed light and restenciled by the road owning the car, then certainly it would be extremely difficult to secure a reweighing every year or every two years even, but if the suggestions already made are adopted there is no necessity that every railroad should light-weigh its own cars. If scales are located at proper places which are tested and operated by government officials there would seem to be no reason why the tare weights of cars might not be corrected upon these scales, and in this event it would be comparatively easy to test the tare weight of every car at least once in two years.

In our opinion the following rules should be adopted: (a) Reweigh every car within one year from the date when it is put into service; (b) reweigh every car after it undergoes substantial repairs; (c) reweigh every car at least once in two years.

The transaction is usually closed before the dispute as to the weight of a shipment begins. The car has been unloaded and gone; there is no way in which the truth of the matter can be determined and this leads to much friction and hard feeling.

Take, as an illustration, the shipment of a carload of lumber from some southern point of production to a northern point of consumption. This lumber is sometimes and perhaps usually sold f. o. b. destination. The consignee pays the freight upon the arrival of the lumber, deducts that amount from the invoice, and remits the balance.

Suppose, now, that the car is weighed at point of origin, en route it is reweighed and advanced 5,000 pounds. The shipper has no knowledge of this advance until he receives remittance from his vendee, when it is too late to examine into the circumstances of that particular case.

What applies to lumber applies, in perhaps a less degree and with less frequency, to various other commodities. Much trouble would be avoided if the interested party could be notified before the car was received and unloaded of exactly the amount upon which freight charges were to be assessed and given an opportunity to make whatever claim he desired in respect to weight before the unloading of

the car. This would be not only a matter of justice to the shipper but would be a protection to the carrier itself against unreasonable claims on account of excessive weight.

In our opinion every carload of freight, where track scales are relied upon to determine the weight upon which freight charges are to be assessed, should be weighed within 50 miles of the point of origin ordinarily. The result of this original weighing should be at once communicated either to the consignor or the consignee, as the parties may direct. If, now, during the subsequent course of the shipment the weight of this car is advanced, the same party should be at once notified by telegram. Carriers complain that there is no way in which to ascertain the name of the party to be notified, but certainly this is a matter of detail in the working out of which no substantial difficulty can be experienced. They also say that it is an undue hardship to require them to send a postal card, and much more a telegram, to the party affected, but it occurs to us that if the carrier has made a mistake in the original weighing, which it is now proposed to correct and which may materially affect the financial interest of the shipper, the very least that can be done is to at once advise the interested party by wire.

If the party notified so elects, he should be permitted, without any expense to him, to require a third weighing of that car. The mere fact that the railroad has weighed it twice with a different result raises a presumption of error which should fairly require the carrier to resolve the doubt at its own expense. In such case the shipper should also be allowed, without liability to demurrage charges, a sufficient time in which to examine into the weight of the car before it is unloaded. If no claim of overweight is made before the unloading, then no such claim should be entertained at all.

What is said as to reweighing at the expense of the railroad does not apply to instances where a reweighing is requested by the shipper for other reasons than because the car has been check-weighed by the carrier and the first weight found wrong. If the shipper for his own purposes requests a second weighing, there is no apparent reason why he should not pay a reasonable sum for this service, unless it appears upon such weighing that the original weight was erroneous and that the shipper was therefore justified in asking that the car be reweighed.

No attempt will be made at this time to enter upon any discussion or to make any suggestions as to most of the rules which should govern the weighing of freight and the correction of incorrect weights. Representative shippers have this matter under consideration with the carriers, and it is expected that as a result of these

conferences satisfactory rules will be formulated. If not, the matter will be further proceeded with by the Commission, and any particular rule can be made the subject of complaint.

Neither do we here attempt any suggestion as to the standards under which track scales should be installed and maintained. This matter has, since the beginning of this investigation, been taken under advisement by the American Railway Association, and we are informed that such rules will in the near future be promulgated by that body. When formulated, their adoption and observance is, of course, voluntary with the railroads in the present state of the law. The purpose of this report has been to point out in a general way the wrong existing, and to suggest in the same general way the remedy. Matters of detail should be disposed of as they subsequently arise.

28 L. C. C.



No. 3943.

GOTTRON BROTHERS COMPANY

v.

GENESEE & WYOMING RAILROAD COMPANY ET AL.

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No. 3737.

BRUCE & WEST MANUFACTURING COMPANY

v.

ERIE RAILROAD COMPANY ET AL.

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No. 4289.

MORTON SALT COMPANY

v.

BUFFALO, ROCHESTER & PITTSBURGH RAILWAY COMPANY ET AL.

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No. 4536.

STERLING SALT COMPANY ET AL.

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

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*Submitted March 25, 1913. Decided June 23, 1913.*

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1. The all-rail rate of 10 cents per 100 pounds on coarse salt in bulk, from the New York producing field to Chicago, being compelled by water competition, it is *Held*, That the normal rate of 14 cents between those points, when scaled back to intermediate points in accordance with the percentage basis, does not result in discriminatory rates as alleged or in rates that are unreasonable.
2. The allegation of a preference of Detroit, and a consequent discrimination against the New York field, in the rates on salt to destinations in central freight association territory not sustained, and the adjustment to this consuming territory from both producing fields found to establish a proper rate relation.
3. A higher rate on salt in packages than on salt in bulk held to be neither unreasonable nor unduly discriminatory when the differentials are not disproportionate to the difference in transportation conditions.
4. A shipment of coarse salt in 200-pound sacks held not entitled to the rate published for coarse salt in bulk, it being well understood in the salt trade that the latter phrase applies only to salt shipped without containers.
5. By the inadvertent omission in a tariff of a qualifying phrase a rate of 10 cents, intended to apply only on coarse salt in bulk, became applicable on coarse salt in packages; *Held*, That the statutory burden of justifying the increased rate resulting from the subsequent correction of the tariff is fully met by the carriers when the circumstances are explained.

*John B. Daish* for Gottron Brothers Company, Retsof Mining Company, Morton Salt Company and other interveners.

*G. M. Stephen* for Bruce & West Manufacturing Company.

*Clark, Breckinridge & Caffey* for Sterling Salt Company.

*Walter E. McCornack* for Detroit Salt Company and other interveners.

*Henry Wolf Bikelé* for Pennsylvania Railroad Company.

*H. A. Taylor* and *T. H. Burgess* for Erie Railroad Company and Chicago & Erie Railroad Company.

*Henry G. Gray* and *W. C. Coleman* for Baltimore & Ohio Railroad Company.

*James S. Havens* for Buffalo, Rochester & Pittsburgh Railway Company.

#### REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

These cases taken together involve the whole adjustment of carload rates on salt, in bulk and in packages, from the New York mines to consuming points throughout central freight association territory. The rates in question, so far as they apply on movements of salt in bulk, were under attack in *International Salt Co. v. G. & W. R. R. Co.*, 20 I. C. C., 530, 531; and the rate fabric obtaining in this territory was there described in this language:

Salt in carloads takes sixth-class rates under the official classification, and the sixth-class rate from New York City to Chicago is 25 cents per 100 pounds. There is, however, a general commodity rate of 20 cents applying on all movements of salt in carloads from New York City to Chicago, this rate being equivalent to 80 per cent of the sixth-class rate. From Retsof, Syracuse, Cuylerville, and other salt-producing points in that vicinity, the sixth-class rate to Chicago is 18 cents per 100 pounds, which is directly proportioned to the sixth-class rate from New York City to Chicago; but salt in carloads, n. o. s., moves from those points to Chicago under a commodity rate of 14 cents per 100 pounds, which it will be observed is also 80 per cent of the sixth-class rate. These class and commodity rates are all scaled to percentage basis destinations. The special rate previously referred to, of 10 cents per 100 pounds from Retsof and other New York producing points to Chicago, applies only on coarse salt in bulk. This rate is not scaled to percentage-basis points.

The complainant in that proceeding was the selling agent in the west of the product of the mines at Retsof, and the theory upon which the case was tried was that the rate of 10 cents on coarse salt in bulk to Chicago ought to be scaled back to other destinations in percentage-basis territory and that the rates in effect to such other points, being the customary percentages of the regular 14-cent rate to Chicago, were relatively unreasonable. The Commission found that the rate on coarse salt in bulk from the New York fields to Chicago was less than a normal rate and was compelled by the competition of the rail-and-lake route through Buffalo; and upon a careful consideration of the extensive record then before us the rates

complained of were not found to be relatively unreasonable. The Commission expressly refrained from passing upon their reasonableness *per se*.

The Gottron Brothers Company, by which the complaint in the first of this group of cases was filed just prior to the announcement of the Commission's conclusion in the case above cited, is in business at Fremont, in the state of Ohio, dealing in building materials and other articles, including salt. In the proceeding based upon its complaint there are numerous interveners, persons, firms, and companies dealing in salt or manufacturing ice cream, curing hides, or requiring salt for other purposes. The Retsof Mining Company, one of the principal New York producers, with mines at Retsof, is also an intervener. The complainant and interveners in the second of the above-entitled proceedings are also consumers of or dealers in salt at points in the territory in question. The Morton Salt Company, complainant in the third of this group of cases, is the successor in business of the International Salt Company of Illinois, and is the selling agent at Chicago of the salt mined at Retsof. Since these complaints were heard the Morton Salt Company has acquired the ownership of the mine of the Detroit Salt Company, also an intervener herein. The Sterling Salt Company, by which the last complaint was filed, is the only competitor of the International Salt Company that produces mine salt. Its plant is at Cuylerville, only a few miles from Retsof, and it ships a large quantity of bulk salt to Chicago under the 10-cent rate.

The charge made in these complaints is that the carload rates on salt, when shipped in bulk and when shipped in packages, are unreasonable *per se*; that the rates are discriminatory and in violation of sections 2 and 3, when compared with the rates from Detroit; and that the higher rates on salt in packages than on bulk movements of salt are unreasonable and unduly discriminatory. In the case of certain destinations a violation of the fourth section is also alleged in the case of bulk shipments only, in that the through rates exceed the combination of intermediate rates on Detroit or Chicago, or the rates to particular points directly intermediate to Chicago or Detroit are higher than the rates to Chicago or Detroit. These alleged violations of the fourth section arise out of the existence of the special rate of 10 cents on bulk salt to Chicago and the special rate of 7.8 cents on bulk salt to Detroit. The specific relief sought by the complainants and interveners is the reduction of the package rate to Chicago from 14 cents to the basis of the present rate of 10 cents per 100 pounds on salt in bulk, and the scaling of the latter rate, on both bulk and package salt, to other destinations to which the rates from the New York field are now scaled on the 14-cent rate to Chicago.

The correctness of the conclusion of the Commission in *International Salt Co. v. G. & W. R. R.*, *supra*, respecting the competitive character of the 10-cent rate on coarse salt in bulk to Chicago is confirmed by this record. When that report was handed down the salt moving from Retsof through Buffalo was handled in boats owned or chartered by the Michigan, Indiana & Illinois line. The practices and relations of that company to salt producing and selling companies have since been considered by the Commission in *Colonial Salt Company v. M., I. & I. Line*, 23 I. C. C., 358. We there held that the so-called boat line and its facilities were the private facilities of the salt company and not public transportation facilities, and that they had been used as a device to defraud the law and secure illegal results in the way of divisions out of the joint rates that amounted to nothing less than rebates. The joint through rates with that line were afterwards canceled as we directed, but we do not understand that the lakes have since been abandoned by these salt companies as a route for their movements of bulk salt from the New York salt field to Chicago. On the contrary the record here indicates that water-borne salt is still moving in large volume, although not in boats operated in the name of the Michigan, Indiana & Illinois Line. When the salt was being carried in the name of that line the larger part of it moved in tramp steamers specially chartered by it for that purpose. Tramp steamers are still available for the movement and are actually used; and the rate for transporting the salt that now moves by the lakes to Chicago has not changed substantially.

The salt produced at Retsof and Cuylerville is mined like coal and is not produced by evaporation, which is the process at other points in the New York field and in the Ohio and Michigan fields. There is also a mine at Detroit, owned by the Detroit Salt Company, an intervenor herein, which, as before stated, has been acquired by the Morton Salt Company since these complaints were brought. Coarse mine salt seems to be worth about \$2 per ton at the mine and is used chiefly by ice-cream manufacturers, packing houses, and for feeding cattle and curing hides, as well as in pickling. Evaporated salt ranges in value from \$2 and \$3 per ton to as high as \$40 and \$50 per ton; and when packed in appropriate cartons it retails for as much as 5 cents per pound. It is used largely for dairy and table purposes, although the coarser and cheaper grades are used in manufacturing and icing. Evaporated salt is produced at other points in the New York field in the neighborhood of Retsof and Cuylerville, and several of the plants are controlled by the International Salt Company, which owns the Retsof Mining Company. The same rate is applied on salt of every quality and grade, irrespective of its use, when shipped in packages; that is to say, when shipped in bags or sacks, in boxes or in barrels.

The same rates are also applied on coarse salt when shipped in bulk, except, as heretofore explained, when shipped in bulk to Detroit and Chicago, for which service there are lower rates. There are also special rates on coarse salt in bulk from Detroit to some 18 destinations, including Chicago, Milwaukee, Peoria, Davenport, East St. Louis, Louisville, and Cincinnati. The record contains no discussion of the propriety, from a rate-making standpoint, of distinguishing between high-grade table salt or dairy salt and the coarser grades of evaporated and mined salt; and no such distinction seems to be made in the rates. The legality, however, of a higher rate on coarse salt when shipped in packages than is charged on that commodity when shipped in bulk is questioned in these complaints. But differences in rates, according to the character of the container or the form in which the commodity is shipped, are not uncommon; and it is clear that such rate adjustments are not unreasonable or discriminatory *per se* when the differentials are not disproportionate to the differences in transportation conditions.

While salt in bulk moves from Buffalo in tramp steamers, there is no movement in such vessels of salt in packages. On the other hand, the so-called standard lake lines do not carry salt in bulk but do transport salt in barrels, boxes, or sacks at a joint rate of 10½ cents per 100 pounds from Retsof, Cuylerville, and other New York originating points. The greater part of the movement of package salt by the lake route consists of the finer grades of salt and is from other producing points than Retsof and Cuylerville. The rail-and-lake package rate of 10½ cents bears the same relation to the all-rail rate of 14 cents to Chicago that the rail-and-lake rates to Chicago usually bear to the standard all-rail rates to that point. In other words, the special water competition that compels the 10-cent rate on coarse salt in bulk from the New York mines to Chicago is wholly lacking in the case of salt, whether coarse or fine, shipped in packages to Chicago.

It is doubtful whether coarse salt in sacks moves in any considerable volume from Retsof and Cuylerville to Chicago either by the all-rail or by the rail-and-lake routes; the greater portion of the movement between those points seems to be in bulk. It is only the large consumer of mine salt who purchases it in bulk in carload quantities. The smaller consumer buys the salt in 200-pound sacks. Orders for that kind of salt at Chicago and points beyond Chicago are taken care of from stock shipped in bulk from the mines and sacked at Chicago.

On the whole record we do not find that the rate of 14 cents on salt in packages to Chicago is unreasonable or unduly discriminatory or that a reduction is required because of the lower rate to that market on coarse salt in bulk.

The new and the principal question presented by the record is whether the rate of 14 cents on package salt to Chicago and the rates on salt in packages and in bulk to other points in central freight association territory, which are based on the 14-cent Chicago rate, are just and reasonable charges for transportation. The proof offered by the complainant and interveners in support of the allegation of unreasonableness is not convincing. It consists chiefly of statements of comparative rates on cement, a low-grade, heavy-loading commodity, between selected points, the ton-mile earnings on which average somewhat less than the ton-mile earnings under these salt rates. In this connection some 10 or 12 other low-grade commodities are mentioned, such as clay, brimstone, and pig lead, whose basis of rates from New York to Chicago are lower than the salt basis. The complainants also refer to the characteristics that make salt a low-grade and desirable traffic, entitled to low rates, namely, its cheapness, the slight risk of loss or damage, and the heavy loading.

The proof offered by the defendants, on the other hand, is more extensive and satisfactorily establishes the reasonableness of the rates *per se*. Two statements of per-ton-mile earnings under these salt rates offered by the carriers are particularly enlightening. One of them includes all the destinations in this territory, about 125 in number, that are named by the complainants or interveners in connection with their claims for reparation. The average earning per ton per mile under the rates from Cuylerville is only 4.8 mills as against 7.8 mills under the rates to the same points from Detroit, 7.3 mills from Cleveland, 7.4 mills from Akron, and 5.6 mills from Ludington. These are the other important salt producing points that compete in this territory. A similar statement presented by the defendants names all the destinations to which salt actually moved from Cuylerville, as shown by their records, during the period from January 1, 1910, to July 14, 1911. Over 150 points are included, and the average earning per ton-mile is only 5.1 mills from Cuylerville, as against 8 mills from Detroit. The rate of 10 cents from Retsof to Chicago yields only 3.6 mills. If scaled to other points in the percentage-basis territory, the average per-ton-mile earnings under such reduced rates would be something like 3.7 mills.

In *Railroad Commissioners of Kansas v. A., T. & S. F. Ry. Co.*, 22 I. C. C., 407, 410, we said:

Salt is very desirable traffic from a transportation standpoint. It loads heavily, is not liable to loss or damage in transit, can be handled at the convenience of the carrier, and affords a uniform business. Its value is comparatively little, being from \$1.50 to \$2 per ton at the point of production. While not consumed as largely as coal, cement, brick, and similar commodities, and while therefore the freight rate is not so noticeable, it is an article of universal and necessary consumption. All these considerations call for a low rate of transportation, and have been repeatedly recognized

by this Commission. It is also true that the ability of a particular producer to sell in a given market has depended largely upon the cost of transportation, and this in turn has operated to force down rates generally, so that salt rates in this territory, certainly, have been established by the voluntary action of the carriers at a low level. Notwithstanding, however, all these considerations which make for a low charge in the handling of this commodity, we are unable, upon any theory, to hold that a rate which pays only 5 mills per ton-mile is unreasonable in and of itself. While this record shows that lower rates have been maintained in the past under stress of competition, and are in some cases being maintained to-day, and while if a carrier maintains a lower rate in favor of one locality it may perhaps be required to accord similar treatment to some other locality, we can not hold that the maintenance of this rate is inherently unreasonable.

In the light of the earnings per ton-mile stated above it can not be said that the salt rates on the 14-cent scale from the New York field are unreasonable *per se*, particularly in view of the fact that those rates apply not only to the movement of low-grade coarse salt from Retsof and Cuylerville but to the higher grades of salt shipped from other points in the same field.

The defendants also presented several tables of rates on other commodities, taking basing rates from New York to Chicago that are the same or higher than the basing rate of 20 cents between those points that governs the salt movement. Included in the list are such commodities as sugar, 26 cents; iron and steel articles, 30 cents; and cement, 20 cents. They also introduced what is said to be a complete statement of the rates from New York to Chicago on 12 articles having a lower basis than that on salt, such as brimstone and sulphur, 16 cents; sand, 17 cents; crushed oyster shells, limestone, and gravel, 18 cents; and these rates are, some of them, not scaled to the lower percentage groups. All this makes a formidable showing in favor of the reasonableness of the rates on salt.

The interest of consumers and dealers in salt in this territory who are complainants and interveners herein is, of course, directed toward the amount of the rate from the New York producing fields rather than to its relation to the rate from Detroit and other producing territories. It may be well to state at this point that the defendants intimate that these consumers and dealers were induced by the International Salt Company or its representatives to come forward with these complaints. The interest of the Retsof Mining Company, intervener in behalf of the reductions, and of the Detroit Salt Company, intervener in opposition thereto, is directed, on the other hand, not so much toward the amount of the rates from their shipping points as to the relation between the rates from the two producing territories. Since the hearing the Detroit mine, as heretofore stated, has been acquired by the Morton Salt Company, the western selling agent for the Retsof company. Assuming that this terminates the competition between the Retsof company and the Detroit company, there still remains a competition between the latter and the Sterling Salt Company at Cuylerville in the New York field.

A glance at the map will reveal that to the greater proportion of these consuming points in central freight association territory Detroit is nearer than Retsof and Cuylerville. Where Retsof is under a substantial disadvantage in mileage it, of course, can not expect to have an equality in transportation charges, inasmuch as the rates are not made on the blanket principle, the groups in which the destinations are included being of limited area. Where the distance is greater from Retsof than from Detroit it is properly to be expected that the earnings per ton per mile shall be somewhat lower from Retsof, inasmuch as there are no differences in operating or transportation conditions that explain or justify an exception to the general rule that the rate per ton per mile should decrease as the haul increases. It appears that this principle has been applied, almost without variation, throughout this rate structure. In eastern Ohio, near the Pennsylvania line, the rates from the two producing fields come together. At Youngstown, Ohio, the rate is 9 cents from either field, and the distance from Detroit is 240 miles, while from Retsof it is 249 miles. The rate per ton per mile is 7.3 mills from Retsof and 7.5 mills from Detroit. At Sharon, Pa., just east of the Ohio-Pennsylvania line, the rate is 9 cents from Cuylerville, for a distance of 235 miles, and from Detroit 9 cents, for a distance of 252 miles, the rate per ton per mile being 7.7 mills from Cuylerville and 7.1 mills from Detroit.

Upon the whole record we are convinced that the rates throughout this territory from the conflicting producing fields have been carefully and scientifically adjusted both with relation to the percentage scale from the east and as between Detroit on the one hand and Retsof and Cuylerville on the other. There are always practical difficulties, too, in attempting to break up a rate relation from fields served by different carriers. For example, the principal carriers out of Detroit are the Wabash, Michigan Central, and Grand Trunk, and these lines are not important carriers of salt from Retsof and Cuylerville. Furthermore, any disturbance in the rate from Detroit, made with the purpose of lining up the rates on coarse salt from the respective mines, would have the effect of disturbing and throwing out of line the rates on evaporated salt which is shipped from wells and refineries not only in the Detroit group but in the Ludington and Manistee section, the Ohio fields, and wells in northern New York. As heretofore stated, the record indicates that the 14-cent rate on salt when scaled to central freight association points from the New York field does not result in rates that are unreasonable *per se*, and if the rates to particular destinations under that scale are unreasonable or discriminatory as compared with the rates to the same points from Detroit the adjustment may be rectified only by an increase in the Detroit rate or a cut in the rate to the particular destinations from Retsof. The latter alternative, of course, involves breaking down the percentage adjustment as applied to the salt traffic.



The record seems to indicate that there is no movement either of coarse salt in bulk or of salt in packages by the lake route from Cuylerville and Retsof to Cleveland, Toledo, Detroit, or other ports that by rail are intermediate to Chicago. The entire movement to those destinations is over all-rail routes. If it should develop that there is any substantial volume of salt moving by the lake to these intermediate ports, there must be a readjustment of their rates in proper relation to the 10-cent rate to Chicago.

In the third of this group of cases, brought by the Morton Salt Company, it appears that a tariff of the principal defendant named the 10-cent rate from Retsof to Chicago, on "coarse salt" in carloads, without limiting its application to such salt when shipped "in bulk." In other words, under the wording of the tariff the rate in question was applicable to carload movements of coarse salt in sacks or packages. It does not appear that the rate was ever used on shipments of any kind until, shortly before the filing of this complaint, the complainant discovered its existence and made a few shipments. The defendants thereupon promptly corrected the tariff and the complainant requested the Commission to suspend the new schedule. This application was denied. The contention of the complainant is that this increase, from 10 to 14 cents per 100 pounds, having been made since the amendment of June 18, 1910, the burden of proof is on the defendants to justify its reasonableness. The general question of the reasonableness of these rates is fully disposed of in the other cases in this group. The particular question is a purely technical one. It will suffice to say that we think the burden resting upon the defendants (under the amended act) of justifying the proposed increase is fully sustained by a mere explanation of the circumstances.

The fourth case in this group, the complaint of the Sterling Salt Company against the Pennsylvania Railroad Company, involves an interpretation of the tariffs. It is the contention of the complainant that salt shipped in 200-pound sacks should properly fall under the tariff description of coarse salt in bulk. It appears that the complainant made a test shipment for the purposes of this case, describing a carload of salt in sacks on the bill of lading as coarse salt in bulk, and when the rate was raised by the carrier from the 10-cent rate to the 14-cent basis this complaint was filed claiming reparation on the shipment. It is well understood by the salt trade that the rate on coarse salt in bulk applies only to such salt when loaded in the cars without any container. From the record here, and from the record in *International Salt Co. v. G. & W. R. R. Co.*, 20 I. C. C., 530, to which the Sterling company was a party, we are convinced that this shipper was familiar with the tariff descriptions as indicated, and that the charges were assessed on the shipment here involved in accordance with the published tariffs. We see no merit in the contention of the complainant.

An order will be entered dismissing these complaints.

No. 4424.

THE MISSISSIPPI RIVER CASE.

STATE OF IOWA ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted November 15, 1912. Decided June 17, 1913.*

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The present rates between the upper Mississippi River crossings in the state of Iowa and points east of the Indiana-Illinois state line found to be excessive and unreasonable in themselves, and also unduly discriminatory when compared with the rates to the lower crossings. Lower class rates prescribed for the future.

*George Cosson*, attorney general, and *C. A. Robbins*, *J. H. Henderson*, and *Dwight N. Lewis* for the state of Iowa and other complainants.  
*Clifford Thorne* for Board of Railroad Commissioners of Iowa.

*S. W. Brookhart* for Keokuk Industrial Association, intervener.

*A. P. Humburg* and *R. V. Fletcher* for Illinois Central Railroad Company.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*C. C. Wright* for Chicago & North Western Railway Company.

*O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

*T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

*G. B. Winston* for Chicago Great Western Railway Company.

*George W. Seevers* for Minneapolis & St. Louis Railroad Company.

*N. S. Brown* for Wabash Railroad Company.

*O. E. Butterfield* for New York Central lines.

REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

This is one of a group of cases which involve practically all the rates under which traffic moves into and out of the state of Iowa. The other cases bring in question the reasonableness and general propriety under the act of the rates between towns and cities in the interior of the state and points east of the Indiana-Illinois state line; the rates between interior Iowa and Chicago and Peoria; and the rates

between interior Iowa and certain points in the states to the west, northwest, and southwest. The manner in which these rates are constructed puts Iowa, as is alleged, on a rate level well above its neighbors, retards its development, and tends to isolate the state commercially. The complaint under immediate consideration attacks the rates between the Mississippi River towns in Iowa and the east. It is taken up first because, from our understanding of the whole situation, it is desirable to reach a proper solution of the issue here before entering upon a consideration of the rates in controversy in the other cases.

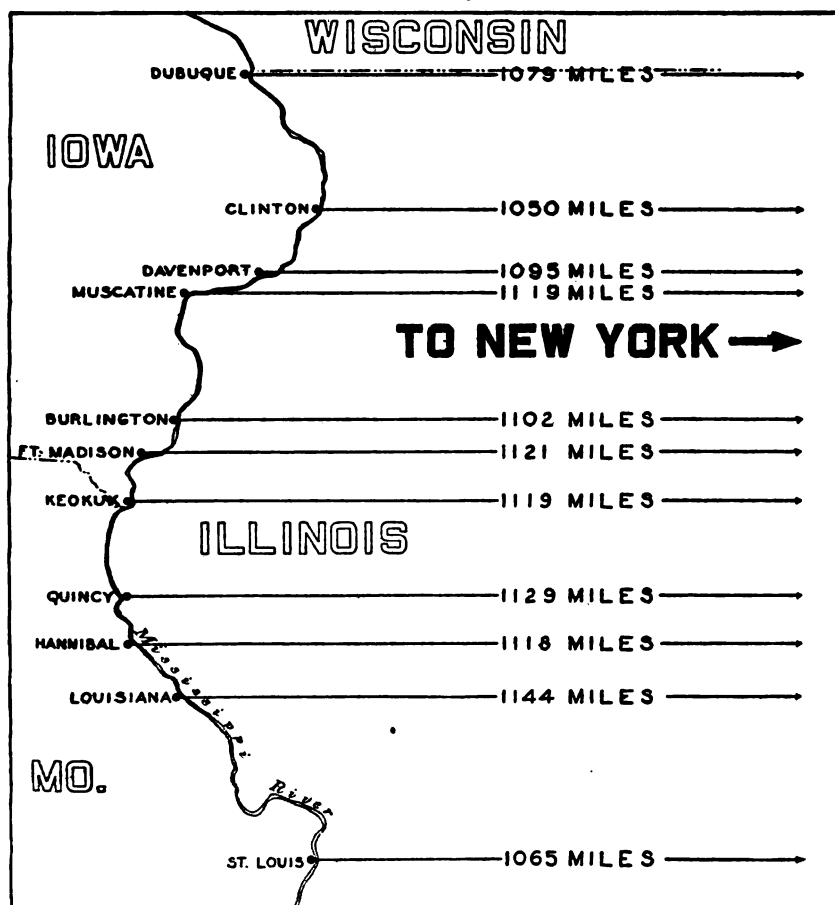
For many years the communities on the Mississippi River between Dubuque on the north and St. Louis on the south have been divided into two groups known as the upper and lower crossings. Disregarding one or two small points having no importance in this inquiry, the upper crossings for our purposes here may be said to include Keokuk, Fort Madison, Burlington, Muscatine, Davenport, Clinton, and Dubuque, all of which are in the state of Iowa. There is no bridge at Muscatine, but it is on the west bank of the river and takes the upper crossings rates. The lower crossings are St. Louis, Louisiana, and Hannibal, in the state of Missouri, and Quincy, the latter being on the east bank of the river, in the state of Illinois.

The complaint was brought in behalf of the upper crossings on the west bank of the river. They demand a parity of rates with St. Louis on all traffic coming from or moving to points east of the boundary line between the states of Illinois and Indiana. The general allegation is that the rates of the upper crossings, both westbound and eastbound, are in themselves excessive and unreasonable, and are also discriminatory when compared with the more favorable rates enjoyed by the lower crossings. After the first hearing was had, intervening petitions were filed by certain commercial organizations at Keokuk, Fort Madison, Muscatine, Davenport, and Dubuque. While these petitions in terms adopt the allegations of the complaint and therefore question the reasonableness of the rates, they also set up the specific allegation of a discrimination in rates against the upper crossings in that they are required to pay a bridge arbitrary on inbound traffic from the east, while the lower crossings pay no such arbitrary, either on inbound traffic from the east or on outbound traffic to the west, and at the same time have the advantage of the same distributing rates to the west that are available to the upper crossings.

From this statement of the issues it will be seen that these cases bring before us questions of the first importance. This is true not only because of the large traffic moving under the present rate adjustments, but because the adjustments have been in effect for many years and any change in them at this time will necessarily be followed by more or less serious disturbances in traffic and commercial

conditions in that territory. As this particular complaint of the river towns opens up a contest between the upper and the lower crossings, an understanding of the geographic relation of all the crossings to one another and to eastern territory is therefore the first matter to engage our attention.

The accompanying map, reproduced from the brief of counsel for complainants, indicates that there is no great disparity in distance from the seaboard to the various crossings. Clinton, one of



the upper crossings, is nearest to New York City. Its short-line distance is 1,050 miles, as against the short-line distance of 1,065 miles from New York City to St. Louis. These are the War Department mileages, although by the Pennsylvania lines St. Louis seems to be 1,053 miles from New York City. The most distant of the upper crossings is Fort Madison. It is 1,121 miles from New York City, as compared to a haul of 1,129 miles from the same point to Quincy, a lower crossing, as the distances are shown on the map.

The average distance of the four lower crossings is 1,114 miles, while the average distance from New York City to the seven upper crossings is 1,098 miles. It should be said, however, that the great bulk of the traffic to the lower crossings is destined to St. Louis, which is 1,065 miles from New York City. The traffic to the upper crossings is more or less equally distributed, Muscatine and Fort Madison being relatively less important.

The west bank of the Mississippi River is the west boundary of what is called the percentage zone territory, and all the crossings, both upper and lower, are under the percentage basis of rates with respect to traffic to and from points east of Buffalo and Pittsburgh. That rate system is described in *Saginaw Board of Trade v. G. T. Ry. Co.*, 17 I. C. C., 128, and is so well understood as to require no further explanation at this time.

In the sense here intended St. Louis was not put into the percentage basis territory until 1908. Prior to that time the western boundary of the territory was on the east bank of the river at that point. East St. Louis was then in the 116-per-cent zone, and the rates to St. Louis were made by surcharging the East St. Louis rates with a bridge arbitrary on a 1-cent scale; but the toll taken out of the rates for the bridge service was on a 3-cent scale. As the result of negotiations between the merchants of St. Louis and the eastern lines, East St. Louis and certain adjacent towns in Illinois were grouped on January 2, 1908, with St. Louis, and all were erected into a new zone taking 117 per cent of the Chicago rates. In this way and at that time St. Louis was first made a definite rate point in that its rates were no longer based on the East St. Louis rates; it was then given its own class rates from New York on the 88-cent scale. These rates, it will be observed, take the traffic across the river with no additional charge in the way of a bridge toll. In the readjustment East St. Louis lost the advantage of being a 116-per-cent point, its class rates from New York being increased from the 87-cent to the 88-cent scale. The same class rates were extended to the remaining lower crossings at Louisiana, Hannibal, and Quincy; but we need not follow the details of the development of the rates at those crossings further than to state that the Burlington forced the situation and assigned the requirements of the fourth section as the explanation.

The history of the rates from New York to the upper crossings is also explained of record. Prior to 1889 the class rates to those crossings seem to have been adjusted on the basis of 125 per cent of the Chicago rates plus a bridge arbitrary of 5 cents. At that time Keokuk was the terminus of one of the branch lines of the Wabash; and this company, during that year and while under a receivership,

reduced the rates to a basis of 122 per cent of the Chicago rates, adding a bridge arbitrary. This action was promptly met by the Toledo, Peoria & Western; and the other western lines were soon compelled to adopt the same basis in order that the jobbers at their crossings might be on a rate parity with Keokuk for merchandising into the interior of Iowa. Davenport on the west bank had theretofore been grouped with Moline and Rock Island on the east bank, with respect to traffic to the interior of Iowa and points beyond, and in the readjustment these two points on the east bank were given the lower class rates, with the bridge toll added, and thus were kept on a parity with Davenport.

Rates constructed on the basis of 122 per cent of the Chicago rates would give the upper crossings a 92-cent scale of class rates from New York City; and as a matter of fact the 92-cent scale is published in the tariffs of the carriers as the rates to points in the 122-per-cent zone. Those rates, however, do not take the traffic across the river, as is the case with the 88-cent scale at the lower crossings. They do not, in fact, take the traffic even to the west bank of the river. A toll is added to effect that result. The zone which embraces the Iowa crossings on the west bank of the river is shown on the percentage map not as a 122-per-cent zone, but as "122 per cent, plus." The "plus" refers to the bridge arbitraries, which, under a tariff note, must be added to the 122 per cent, or 92-cent scale of rates in order to make the rates for that zone. These arbitraries are as follows:

Classes.....	1	2	3	4	5	6
Bridge tolls....	5	5	5	4	3	2

In this manner the present class rates to the upper crossings, and to all other points in the so-called "122 per-cent-plus" zone, are actually made on a 97-cent scale and not on the 92-cent scale. Although expressly published as such, the western lines out of Chicago assert that these arbitraries can not properly be considered as bridge tolls, not being added to the 92-cent scale as compensation to the western lines for handling the traffic across the bridges spanning the Mississippi River, but simply to make a basis for the difference between the rates to those crossings and the rates to the lower crossings. Although published as separate charges to be added to the 92-cent scale of rates, this is done, as the carriers say, merely because the aggregate charges thus constructed are not made or joined in by the eastern lines. This view of the matter is supported by the fact that the so-called "122-per-cent-plus" zone reaches well back into Illinois and fixes the rates on the traffic of points in that state upon which no bridge service is performed at all.

But whatever may have been the reason for so publishing the rates, a comparison of the aggregate charges on class traffic to the upper

28 I. C. C.

crossings with the class rates to the lower crossings shows a rate advantage in favor of the latter as follows, taking New York City as typical of the whole Atlantic seaboard:

Classes .....	1	2	3	4	5	6
Upper crossings....	97	84	66	47	40	33
Lower crossings....	88	76	59	41	35	29
Difference.....	9	8	7	6	5	4

These discriminations against them, the upper crossings contend, are too great a burden to carry and make their freight charges both unreasonable and unduly discriminatory; and they offered much evidence in support of their prayer for a parity of rates with the lower crossings. While Quincy has not grown, perhaps, as rapidly as some of the upper crossings, the complainants point to the general prosperity of St. Louis and Hannibal under their more favorable rate adjustment. There is also testimony of record tending to show that the Iowa cities have met with difficulties in their effort to secure the location of new industries at the several crossings, and that in some instances they have found it difficult even to retain the industries that are now established there. Indeed, mention is made of a number of companies that have removed from Keokuk and other river points in Iowa to locate elsewhere because of the discrimination against them in the rates. Advertisements were introduced of record in which Quincy and St. Louis, in their efforts to secure new industries, have set forth their claims from a rate standpoint as compared with the upper crossings. The complainants speak of this as a "cold-blooded" way of taking advantage of an improper rate adjustment. As a matter of fact, Quincy is reached by no eastern carrier and has a two-line haul. Its distance from New York exceeds that of any other of these crossings except Louisiana, which is also a lower crossing reached only by western lines but nevertheless enjoying St. Louis rates. Moreover, Quincy is only 31 miles south of Keokuk, a fact that is emphasized by the complainants as indicating the manifest injustice of the difference in the rates enjoyed by the two communities. If there is any dissimilarity in conditions, as between Quincy and Keokuk or the other Iowa crossings, the complainants strongly assert that the difference is in favor of the Iowa towns.

On behalf of Keokuk a mass of exhibits and some testimony were presented. The water power in process of development there involves an expenditure of \$25,000,000 and will produce about 200,000 horsepower. Although Keokuk's location on the river and this large power at its door give promise of a great city, its citizens feel that the present handicap in freight rates is such as to make it impossible to attract new industries there, the advantage of cheap power being more than offset by the disadvantage in the rates.

Keokuk is therefore demanding with great earnestness the same basis of rates that is now available to its neighbors at the lower crossings, and particularly at Quincy, only a few miles distant. The advantages of the water power of Keokuk, of its geographic location, and of its shorter mileage are all destroyed, it is contended, by the present unnatural rate adjustment.

The other upper crossings are asking no less earnestly for a rate parity with the lower crossings; and in support of their contentions several arguments are advanced. Their first proposition rests on the fact that the Missouri River crossings are grouped with respect to traffic from the east, while the Mississippi River crossings, although approximately covering the same extent of territory from north to south and with approximately the same differences in mileage from the east, are not so grouped. As a matter of fact, from New York the extreme difference in distance as between all the Mississippi River crossings is less than the extreme difference in distance as between the Missouri River crossings. Another point urged with some vigor is the fact that, with respect to traffic originating at or destined to the Pacific coast, Spokane, Utah common points, Oklahoma common points, and points in Colorado, Nebraska, and Kansas, or, in other words, substantially all the great territory west of the Missouri River, the upper crossings are grouped with St. Louis in disregard of any differences in mileage, which as to some points favor St. Louis, but in many, if not in most, cases favor the upper crossings.

The charge of unjust discrimination against the Iowa crossings and the resulting undue preference of St. Louis and the lower crossings is supported by much testimony; it is the main feature of the controversy and demands careful attention. To use the language of counsel for complainants, the present rate adjustment in favor of St. Louis on traffic originating in the east—

creates a combination of rates in every instance against the Iowa cities \* \* \* to any point west of the Missouri River. This all tends to circumscribe the business activities of the Iowa cities, and when they are able to compete with Quincy and St. Louis it is because of special ability or some other factor so superior to that possessed by the merchants of the Missouri cities as to effectually offset the constant handicap in freight rates.

This discrimination is not justified, as the complainants assert, by any differences in circumstances or conditions affecting transportation. The nature of the routes, the prosperity of the various carriers, the density of their traffic and other transportation conditions are discussed of record, and the complainants contend that there is nothing in these matters that makes against their demand. Many exhibits were offered in behalf of the Iowa cities, the result of which is a demonstration of the fact claimed, namely, that to this great



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This discrimination is not justified, as the complainants assert, by any differences in circumstances or conditions affecting transportation. The nature of the routes, the prosperity of the various carriers, the density of their traffic and other transportation conditions are discussed of record, and the complainants contend that there is nothing in these matters that makes against their demand. Many exhibits were offered in behalf of the Iowa cities, the result of which is a demonstration of the fact claimed, namely, that to this great

western territory the combination of inbound and outbound rates favors the lower crossings as against the Iowa crossings by substantial amounts. A single example of this will suffice to illustrate the general situation. The first-class rate under the official classification from New York to St. Louis is 88 cents and to Keokuk 97 cents. The first-class rate from all the crossings to Lincoln, in the state of Nebraska, is 65 cents. The aggregate charge to the jobber at Keokuk is therefore \$1.62, while the aggregate charge to the jobber at St. Louis is \$1.53, with no great difference in mileage. A part of this discrimination, as is said, lies in the bridge toll added on inbound traffic at the upper crossings, the inbound traffic of the lower crossings not being so burdened. The traffic even of Quincy, which is on the east bank and, as stated, is also a lower crossing, when moving outbound on merchandising rates, crosses the river without paying a bridge arbitrary. Examples might be multiplied of this rate inequality between the upper and lower crossings with respect to the combination of inbound and outbound rates upon which jobbers conduct their business. Of course, as to many kinds of merchandise, this disadvantage against the upper crossings is not a practical one, for jobbing houses at those points can not in any event strongly compete in the territory west of the Missouri River with jobbing houses on the Missouri River. It was shown, however, that in the case of some merchandise, such as shoes, overalls, etc., the higher charges do actually curtail the activities, in the territories west of the Missouri River, of the commercial houses at the upper crossings.

Considering all that is disclosed of record with respect to the mileage to the several crossings, the general conditions affecting transportation to and from and through them, the geographic location and the commercial activities of the upper and lower crossings, we think a rate situation is presented that requires some explanation and justification by the carriers, if it is to be further maintained. In fact, a rather clear *prima facie* case is made by the mere recital of the facts. The thought is stated in that form because, in the consideration of the several complaints coming before us during the past few years in which this general rate structure has been brought to our attention, it has become increasingly evident that the fact that this relation of rates, as between the upper and lower crossings, has been in effect for a number of years would not alone justify its continuance for the indefinite future. Time has an undoubted weight in rate matters. It may often be controlling when a rate in daily use has been accepted by shippers for some years without criticism or complaint. This may perhaps be said even more strongly of a relation of rates under which different communities have competed with one another for some years. But time can not be permitted to rob a

group of communities of their right to relief from what, in view of changed conditions, will be a manifest rate discrimination if further continued.

There has, of course, been no change in the geographical relation of the upper to the lower crossings; but in the conditions affecting transportation there has been a great change in recent years. In addition to the direct evidence of record on the point we may draw upon the recent history of that part of the country. The census shows a very rapid and large increase in population at Seattle, Portland, Spokane, and other towns in the northwest which have reached the magnitude of cities in the last few years. There has also been a rapid growth in agricultural and industrial development in those states and in the entire territory west of the Missouri River. The tonnage over the direct routes to all the Mississippi River crossings has therefore undoubtedly grown to be very large. But the point that we are endeavoring to emphasize is not that there is a greater density of traffic over the upper crossings than over the lower crossings or vice versa, but rather that over all the routes to all the crossings the density of traffic has become so great as practically to absorb and take that factor out of the discussion as a basis for any substantial difference in the rates as between the upper and lower crossings. Moreover, the defendants compare the traffic density of the eastern lines as systems, meaning those reaching Chicago and St. Louis, with the density of traffic over the lines west of Chicago. The comparison is, of course, unfavorable to the latter carriers, and the defendants contend, therefore, that the rates to the upper crossings may properly be higher than the rates to the lower crossings. We can not accept this, however, as a conclusive basis for comparison. So far as density may be regarded as a substantial element in this rate situation, the density over the routes by which the traffic moves would be a more persuasive basis for the comparison, whether those routes are made up wholly of eastern lines, as in the case of the routes to St. Louis, or are composed of the eastern lines together with the western lines, as to most of the upper crossings. The exhibits of the defendants show the density of traffic only by systems and by territories. In our judgment the comparison, to have any controlling value in the consideration of these rates, ought more or less to be limited to the traffic density over the direct routes to the various crossings. So considered we are unable to find from the record that St. Louis and the other lower crossings now have any very material advantage in density over the routes to the upper crossings.

A careful study of the record in respect to the various matters hereinbefore adverted to leads clearly and strongly to the conclusion

that the present relation of rates as between the upper and lower crossings no longer fits the conditions surrounding the traffic, and that the complainants, as we have indicated, have made out a prima facie case which the carriers must meet if the present adjustment is to continue. Let us therefore see what the defendant lines have to say in support of the present adjustment.

Their principal defense is that the circumstances and conditions surrounding the movement of traffic to and from the upper crossings differ substantially from the circumstances and conditions surrounding the traffic to and from the lower crossings, and warrant a higher level of rates to the cities in Iowa on the west bank of the Mississippi River. They assert that there are substantial differences in the character of the routes, in the density of traffic over the several routes, and in the conditions of competition and operation affecting the traffic moving over them to the several crossings. They point out, for example, that the eastern lines took no active part in this proceeding and that those lines, reaching St. Louis with a one-line haul, determine the basis of rates to that point, while the western lines, reaching the Iowa cities on the west bank of the river, have no voice whatever in fixing the rates between St. Louis and the east, although some of them participate in St. Louis traffic moving by way of Chicago. On the other hand, as the defendants contend, the rates of the Iowa crossings are made by the eastern carriers in conjunction with the western lines, and apply to what is a two-line haul as against a one-line haul to St. Louis. As a matter of fact, however, St. Louis is the only one of the lower crossings that can claim a rate advantage by reason of a one-line haul. The other three lower crossings, namely, Quincy, Hannibal, and Louisiana, are reached from the seaboard only over two-line routes. But they nevertheless take the St. Louis rates. On the other hand, Keokuk and Burlington are reached by the rails of the Toledo, Peoria & Western, which, at Effner, Ind., joins the rails of the Pennsylvania lines, by which it is owned in conjunction with the Burlington. The complainants therefore contend that if any advantage is to accrue to St. Louis by reason of its so-called one-line haul the same advantage belongs to Keokuk and Burlington, if the Toledo, Peoria & Western be considered as a part of the Pennsylvania system. They think it should be so considered because the rails of the Pennsylvania, the New York Central, and the Baltimore & Ohio, the so-called one-line routes to St. Louis, are operated west of Buffalo and Pittsburgh by separate corporations, namely, the Vandalia, the Big Four, and the Baltimore & Ohio South-western, and yet these lines are claimed by the defendants to be one-line routes to St. Louis.

The second respect in which the defendants allege a difference in transportation conditions over the several routes to the various crossings is in the matter of traffic density. The testimony offered by the complainants on that point is said by the defendants to be entirely insufficient. In the foregoing pages we have criticized the tonnage statistics of the carriers as not being sufficiently concrete and definite to prove anything of real value respecting these rates. Without going over that ground again it will suffice to say that while the St. Louis lines perhaps have some advantage in this respect, it is not large enough to be very material, and certainly not large enough to justify the present advantage in rates that St. Louis and the lower crossings have over the Iowa cities on the west bank of the river.

Another point upon which no small stress is laid by the defendant lines is that on movements to the Iowa crossings a transfer or rehandling is required at Chicago, Peoria, or other gateways, whereas movements from the east to St. Louis are handled through to destination without a transfer or any rehandling. We do not understand that carload freight destined to the upper crossings is ordinarily transferred at Chicago or at the other gateways; and on general principles there ought not to be any necessity for such a transfer except in unusual cases. In any event, the fact that this may be necessary at times, or even frequently, can not justify a difference in the rates on a 9-cent scale, when the length of the haul and most of the other conditions affecting transportation are approximately similar. A large part of the less-than-carload traffic is rehandled or transferred at Chicago and other junction points, and in any final conclusion as to what is a proper relation of rates as between the upper and lower crossings this fact ought not to be overlooked.

No definite figures are given by the carriers as to the effect on their revenues of an order putting the upper crossings on a parity with St. Louis, but it is claimed that the result would be severe. In addition to its direct results the application of the 88-cent scale to those crossings would force a reduction in the through charges to practically the entire state of Iowa. Under the requirements of the fourth section reductions would also follow in the rates to Freeport, Sterling Dixon, Monmouth, and many other towns in Illinois now in the 118, 120, and 122 per cent groups. The effect would probably extend to northern Missouri, southern Minnesota, and southern Wisconsin. In the aggregate the loss in revenue undoubtedly would be very substantial. This is earnestly pressed upon our attention and is a matter requiring due consideration. In that connection it is said by counsel for the defendants that low freight rates necessarily mean an inferior

service because, in the absence of a revenue sufficient to enable the carriers properly to maintain their lines and to have adequate facilities and sufficient equipment, the service of the defendants must necessarily suffer. What the complainants really need, in the judgment of counsel for the carriers, is railroads with full equipment, enlarged facilities, and a better service; and this they think the shippers should endeavor to secure rather than to cripple the facilities of the carriers and make their service inefficient by insisting upon lower rates.

There is of course no small force in the general proposition that just at this period of our commercial development increased facilities, a more extensive equipment, and a better service are more important to the general shipping public than a reduction in freight charges. This is being pointed out to us by shippers as well as by carriers. But this view necessarily can not appeal strongly to communities that are directly competing with other communities and wish to grow and expand and enlarge their trade, but find the door to opportunity partly closed and their favorable geographic location substantially discounted by effective discriminations in their rates. And the objections and protests against such a rate structure become still more aggressive when it more or less affects the commerce of an entire state.

These contentions by the parties in interest are supported by a voluminous record containing a multitude of exhibits and much testimony. We have referred to them at some length in the preceding pages because of the importance of the case and because of the relation of this case to those that follow. But the issue here, as pointed out in the beginning of the report, is really a very simple one, namely, whether the rates to the upper crossings are excessive and unduly discriminatory, as alleged by those who have attacked them.

Upon a careful consideration of the whole record we find that the class rates to and from the upper crossings are excessive and unreasonable and that there is an undue and unjust discrimination both in the westbound and the eastbound rates of the upper crossings when compared with the more favorable rates enjoyed by St. Louis, Quincy, and the other lower crossings on Atlantic seaboard traffic. Whatever may have been the case some years ago, we find no such differences at this time in the circumstances and conditions surrounding the traffic or affecting the carriers as will justify the further continuance of the discrimination, at least in the degree and to the extent to which it now exists, or that will justify the continued maintenance of the present rates. Taking all things into consideration, much can be said, and much has been said on the record by these complainants, in support of the contention that there should be a parity

of rates from the seaboard as between St. Louis and the Iowa towns on the west bank of the river; and we should be disposed to require such a parity of rates to all the crossings if the rate situation could be considered abstractly on the record and without regard to the effect elsewhere and upon other rates. That, however, would not be so broad a view of the matter as the circumstances require. We can not put out of sight the discriminations and inequalities that would result from such an order; on the contrary we must look at the whole situation and in that manner arrive at substantial justice. Moreover, the effect of such an order and of so radical a change in a rate structure of this importance would be far-reaching; it would not only profoundly disturb the communities immediately involved, but would disturb other communities, and at the same time result in a drastic reduction in the revenues of the carriers. As a regulating body, we can not overlook such consequences.

The facts of record do not suggest the propriety of allowing an increase in the rates of the lower crossings. On the contrary, we have found that the rates of the upper crossings are excessive. It follows, therefore, that if a parity of rates is brought about in the future in either of the ways mentioned, it must be reached through a reduction in the rates to the upper crossings. Nevertheless, an order at this time putting the upper crossings on the St. Louis rate basis would be so serious in its effect upon the revenues of the respondents that we are constrained to modify the conclusion that we otherwise might reach. We think that some weight may be, and under all the circumstances should be, given to the fact that most of the traffic to the upper crossings moves over a two-line route. There is, of course, no fixed rule of transportation requiring a higher rate for a two-line than for a one-line haul of the same distance; as a matter of fact a two-line haul saves each of the participating carriers one terminal service. On the other hand, a one-line haul is highly desirable in that it gives the one carrier all the revenue. But not infrequently, where a carrier must divide its revenue with a connection, we have recognized the propriety, under the special conditions shown, of a higher through charge. We think recognition may properly here be given to the fact that on almost the entire volume of traffic to the upper crossings two or more carriers share in the revenue. We must not forget also, as hereinbefore noted, that a large part of the less-than-carload traffic to the upper crossings is transferred at Chicago or at some adjacent gateway, and that the St. Louis routes apparently have a slight advantage in density. With all these considerations in mind we find upon the record that there is in the present adjustment an undue and unjust rate discrimination against the



upper crossings which ought to be modified by a reduction in the rates to those crossings. Testing the present rates of those crossings, eastbound and westbound, by the rates voluntarily made by the carriers for the lower crossings and by all other facts of record, we also find that the rates to and from the upper crossings are excessive and unreasonable, and that any rates between New York City and the upper crossings will be unreasonable when in excess of the following scale of class rates, which we prescribe as maximum rates, in cents per 100 pounds, for the future:

Class.....	1	2	3	4	5	6
Rate.....	90	78	60	42	36	30

The rates from other points in eastern territory will be adjusted on the present relation of those points to New York City under the present rates. There are slight differences between the eastbound and the westbound rates, but we find no basis of record for preserving this difference in the future; we therefore fix the same rates on eastbound as on westbound traffic.

Confining the comparison to the westbound traffic the rates here prescribed for the future will be the following reductions under the present rates:

Class.....	1	2	3	4	5	6
Reductions.	7	6	6	5	4	3

They will also exceed the St. Louis rates, in cents per 100 pounds, as follows:

Class.....	1	2	3	4	5	6
Excess.....	2	2	1	1	1	1

The rate in cents per ton per mile from New York to Clinton under the 97-cent scale and under the 90-cent scale are as follows, the distance being 1,050 miles:

*Earnings per ton-mile.*

Class.....	1	2	3	4	5	6
97-cent scale....	1.85	1.6	1.25	0.89	0.76	0.63
90-cent scale....	1.71	1.49	1.14	.8	.69	.57

To Burlington, one of the most distant of the upper crossings, the earnings in cents per ton per mile under the existing rates from New York and under the rates herein fixed are as follows, on the basis of a haul of 1,102 miles:

97-cent scale....	1.76	1.52	1.20	0.85	0.73	0.60
90-cent scale....	1.63	1.42	1.09	.76	.65	.54

These revenues to Clinton and Burlington, as typical crossings, compare with the ton-mile earnings under the 75-cent scale of rates

from New York to Chicago, a distance of 912 miles, and the earnings per ton per mile under the 88-cent scale to St. Louis, a distance of 1,053 miles, as follows:

To Chicago.....	1. 64	1. 43	1. 10	0. 77	0. 66	0. 55
To St. Louis....	1. 67	1. 44	1. 12	. 78	. 66	. 55

#### CENTRAL FREIGHT ASSOCIATION RATES.

In what precedes we have been dealing more particularly with the rates between the upper crossings and points on the Atlantic seaboard in New England and in trunk line territory, or, in other words, with the rates to and from points east of Buffalo and Pittsburgh. But, as stated in the beginning, the complaint also involves the rates to and from points in the territory east of the Illinois-Indiana state line. The present adjustment of these rates is on an entirely different basis. The central freight association territory extends westward to Chicago and St. Louis, but does not include the northwestern portion of Illinois or the upper crossings in Iowa. The rates between points of origin and destinations in that territory are built substantially on distance, using what is commonly known as the central freight association mileage scale, a special method of rate making explained in *Indianapolis Freight Bureau v. C. C. C. & St. L.*, 23 I. C. C., 198. The rates to St. Louis and East St. Louis are adjusted on that basis from points east of the Indiana-Illinois state line. Quincy, which as a lower crossing takes the St. Louis rates from the seaboard, also has the benefit of the same rates as St. Louis from the great majority of the points west of Buffalo and Pittsburgh. To the upper crossings the rates apparently are not made with regard to this mileage scale but, on the contrary, without exception so far as the record discloses, are higher than the rates to St. Louis from the same point, even where the mileage to the upper crossings is comparatively less.

While New York is representative of the points east of Buffalo and Pittsburgh, it is difficult to select any one point as typical of the points in central freight association territory with respect to this traffic. Columbus is centrally located and is referred to frequently on the record; its short-line distance from St. Louis is 428 miles, while from Clinton, an upper crossing, it is 452 miles. Yet the first-class rate from Columbus to St. Louis is 46 cents and to Clinton 59 cents, a difference of 13 cents for the longer haul of only 24 miles. From Fort Wayne, in the state of Indiana, the distance, on the other hand, favors Clinton, the haul being 286 miles as against 342 miles to St. Louis. The rate, however, is 52 cents to Clinton as against a rate of only 43 cents to St. Louis, a difference of 9 cents per 100 pounds. The situation may be further illustrated by the following

statement of rates and mileages from typical points in different parts of the central freight association territory to the several crossings:

From—	Lower crossings.				Upper crossings.				
	St. Louis.		Quincy.		Rate.	Mileages.			
	Rate.	Mileage.	Rate.	Mileage.		Burlington.	Clin-ton.	Du-buque.	Kao-kuk.
Pittsburgh.....	56½	621	56½	685	69	674	606	635	675
Columbus.....	46	428	46	484	59	492	452	481	483
Saginaw.....	46	593	46	572	55	515	447	476	558
Lansing.....	46	478	46	483	55	426	358	387	466
Grand Rapids.....	46	462	46	441	55	384	316	345	437
Indianapolis.....	38	240	42	304	52	308	321	350	319
Fort Wayne.....	43	342	43	380	52	354	286	315	395
Cincinnati.....	41	341	42	433	55	419	436	465	448
Toledo.....	46	437	46	475	55	450	382	411	490
Cleveland.....	52½	548	52½	567	65	563	495	524	544

These differences against the upper crossings are complained of on the same grounds that are urged against the rates from trunk-line territory to the upper crossings, that is to say, they are alleged to be discriminatory and also unreasonable. Upon all the facts of record we find that there is merit in that contention. Like the rates to and from the seaboard we find that these rates are unjust and unreasonable and unduly discriminatory. It follows that there must be a substantial readjustment of the rates to the upper crossings and that the spread between those rates and the rates from the same points to the lower crossings must be materially modified. We shall not undertake in an order to fix these rates but shall look to the carriers promptly to suggest a basis for these rates for the future that will be in conformity with the views and conclusions herein expressed.

#### COMMODITY RATES.

But this proceeding is not limited to class rates. Substantially the same complaint is made of the commodity rates between the upper crossings and all the territory hereinbefore mentioned; and with respect to particular commodities considerable testimony was presented. For example, on petroleum the carload rate to St. Louis and to Quincy from the Oil City district of Pennsylvania is 20 cents, while to the upper crossings it is 26 cents. From Cleveland the rate on this commodity is 17½ cents to the lower crossings and 23 cents to the upper crossings, and from Toledo and Findlay, Ohio, the rates are 16 and 22 cents, respectively. The mileage in each of these instances is less to the upper crossings. Another example is the eastbound rate on sash and doors, which are manufactured in large quantities

at Davenport, Dubuque, and other upper crossings, as well as at St. Louis. The Iowa manufacturers pay the same rate as their St. Louis competitors on lumber moving from the Pacific coast and a higher rate when moving from Arkansas and Louisiana. On their shipments of sash and doors to points east of the Indiana-Illinois state line the rates they pay are higher in practically every instance than the rates from St. Louis, although the mileage is substantially the same. No real justification is offered on the record for these differences in the rates as against the upper crossings. Nevertheless commodity rates are special rates which ought to be made with reference to all the conditions surrounding the transportation of the particular articles between the particular points. On a record so wide in scope as this one, where all the facts with respect to a particular commodity are not or may not be fully disclosed, it is impractical to attempt to fix the specific rates on particular commodities as the maximum rates for the future. We shall therefore go no further at this time than to express the conclusion that the commodity rates of the upper crossings ought not to exceed those in effect to and from St. Louis in a greater degree than the difference that we are allowing to continue with respect to the class rates. This seems to be now true of the rates on some commodities.

An order will be entered to give effect to the conclusions herein expressed. In view of the fact that the revised basis of rates to the interior towns as required in the cases that follow will not be submitted to us until October 1, we shall fix November 1 as the effective date for the order herein.

28 I. C. C.

**INTERIOR IOWA CITIES CASE.**

**No. 3464.**

**STATE OF IOWA ET AL.**

*v.*

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY  
COMPANY ET AL.**

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**No. 3465.**

**SAME**

*v.*

**NEW YORK CENTRAL & HUDSON RIVER RAILROAD  
COMPANY ET AL.**

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*Submitted November 15, 1912. Decided June 17, 1913.*

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1. The rate adjustment upon which through charges are based on movements of class traffic, between points in the interior of Iowa and points in the territory east of the Indiana-Illinois state line, described and condemned as resulting in rates that are unreasonable and unduly discriminatory.
2. A proportional rate may not be condemned simply because it exceeds the local rate between the same points or because it may yield excessive earnings for that part of the through movement. A shipper has no real grievance with respect to his through traffic unless compelled to pay excessive charges for the through service. It frequently happens, however, that the through charge for a through service is unreasonable because one of its factors is excessive; in such a case on a proper record, as in this case, the excessive proportional may be reduced.
3. The through charges in question found to be unreasonable and unduly discriminatory because of the excessive and discriminatory proportional rates applied between the Mississippi River and the interior Iowa points, and the defendants required to submit for approval a schedule of proportional class rates graded back across the state on the basis of the proportional scale of 55 cents between the rivers fixed in *Warnock Co. v. C. & N. W. Ry. Co.*, 21 I. C. C., 546.

*George Cosson, attorney general, C. A. Robbins, J. H. Henderson,  
and Dwight N. Lewis, for the state of Iowa and other complainants.  
Clifford Thorne for board of railroad commissioners of Iowa.*

*N. T. Guernsey* for Greater Des Moines committee and others.

*C. C. Wright* for Chicago & North Western Railway Company.

*A. P. Humburg* and *R. V. Fletcher* for Illinois Central Railroad Company.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

*T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

*G. B. Winston* for Chicago Great Western Railroad Company.

*George W. SeEVERS* for Minneapolis & St. Louis Railroad Company.

*N. S. Brown* for Wabash Railroad Company.

*O. E. Butterfield* for New York Central lines.

#### REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

In the report just disposed of (*ante*, p. 47) we have referred to that complaint, the complaints under consideration here, and to the complaints that follow (*infra*, pp. 76 and 82) as a combined effort on the part of the state of Iowa, its railroad commission, and its merchants and shippers to secure more favorable rates into and out of the entire state. The most important traffic involved on the record in this proceeding is to and from the east, and for convenience the above-entitled complaints are referred to as the interior Iowa cities case. They were consolidated and heard together on one record and both the eastern and western carriers are parties to it.

The reductions that we have required in the preceding case (*ante*, p. 47), in the local rates to the upper Mississippi River crossings, will result necessarily in reductions in the through freight charges of the interior towns; such a readjustment must follow in order to avoid through charges in excess of the sum of the intermediate rates on the river. Nevertheless these lower rates of the interior towns will not satisfy the shippers on whose behalf the complaints now before us were filed. The record indicates the existence of a substantial contest for commercial supremacy between the river towns and points in the interior, and under the present rate adjustment the latter are at something of a disadvantage, which will be increased by the reductions in the rates to the river unless the adjustment is relieved by material reductions herein in the rates to and from the interior.

The interior towns have no joint through class rates to and from the territory east of the Indiana-Illinois state line; on such traffic the through charges are based on the lowest available combination of intermediate rates, and this usually makes on the Mississippi River. But the through charges are made up and published in an

unusual form which must be fully understood in order to arrive at intelligent conclusions with respect to the various questions here before us. With that end in view it may be well first to make a brief reference to the construction and recent history of the rates from the east to the Missouri River:

As we have seen, the upper Mississippi River towns take higher rates from the east than the lower crossings. In this respect the Missouri River towns stand on a different basis. All points on that river, from Kansas City on the south to Omaha and Sioux City on the north, have been on a parity of rates for many years with respect to traffic to and from the east. Traffic to those points may be said to be competitive in the sense that a number of the carriers serve both Kansas City and Omaha; but the general conditions are such as to require us to regard the through charges in effect at this time to the Missouri River as normal and reasonable through rates, unaffected by any transportation conditions tending to depress their general level. As stated in the preceding report, the Mississippi River from St. Louis on the south to Dubuque at the north, a distance of about 350 miles, is crossed at a number of different points known as the upper and lower river crossings. While the northern and southern routes are on a parity at the Missouri River, as just stated, the through charges are, and for many years have been, made up on a different basis. To St. Louis and the other lower crossings, as we have seen in the previous case, class rates are applied from New York City on an 88-cent scale. Besides being the local rates to St. Louis this scale of rates applies as proportional rates on through traffic to the Missouri River. From the lower crossings to all points on the Missouri River there is a local 60-cent scale of class rates, which was applied also to through movements until, in *Burnham-Hanna-Munger Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C., 299, we held that the through charges ought to be somewhat less than the sum of the intermediate rates and thereupon required the carriers to establish between the rivers proportional rates on through traffic on a scale of 51 cents per 100 pounds. At that time the first-class rate to East St. Louis was 87 cents and, with the local 60-cent rate beyond, the through charge to the Missouri River was \$1.47. Subsequently St. Louis was given an 88-cent scale of class rates, which, together with the proportional scale of 51 cents, required under our order in the case cited, made a through charge on first-class traffic over the lower routes of \$1.39 per 100 pounds. The present through charges to Missouri River points over the lower routes are on a scale of \$1.43 as hereinafter explained.

The local rates to the northern Mississippi River crossings have been and now are fixed on a 97-cent scale, and the same 60-cent scale of local rates between the rivers has been and now is in effect. In

order therefore that the northern routes might be on a parity with the southern routes on through traffic to the Missouri River, it was necessary for the carriers to the upper crossings, at the time the case last cited was under consideration, to shrink their 97-cent local scale to the Mississippi River to a proportional scale of 87 cents. When the local rates to the lower crossings were put on an 88-cent scale the northern carriers applied that scale as proportional rates to the upper crossings on through traffic. And after our order in *Burnham-Hanna-Munger Co. v. O., R. I. & P. Ry. Co.*, *supra*, had been entered, the northern carriers established a 51-cent scale of proportional rates between the rivers, thereby making a scale of through charges to the Missouri River on a parity with the through rates over the lower routes. Later, in *Warnock Co. v. C. & N. W. Ry. Co.*, 21 I. C. C., 546, we permitted the carriers, under the changed conditions there shown, to increase the scale of proportional rates between the rivers from 51 to 55 cents; this, in connection with the 88-cent scale applicable to the upper and lower crossings on through traffic, yielded a scale of through charges on class traffic over all routes to the Missouri River of \$1.43. That is the adjustment in effect at this time. These rates will not be affected by the order in *The Mississippi River Cities case*, *ante* p. 47.

But the proportional rates to the Mississippi River are not made and never have been made with special reference to the traffic of interior Iowa points. On the contrary they are made largely to meet the conditions of through traffic to the Missouri River and to the territory beyond. Moreover, in neither of the cases above mentioned did we deal with the rates to interior Iowa. Nor have the carriers in consequence of either decision made any change in their through charges to and from those points, except in the western part of the state where some reductions were required under the fourth section. And therefore in the case now before us, as we analyze the situation, we must consider the relation of the through charges to interior Iowa to the through charges to points on the two rivers, and must ascertain to what extent, if at all, they are unreasonable or unduly discriminatory. While there has been a growing number of complaints from these communities their rates have not until now been challenged in any comprehensive way. In *Greater Des Moines Committee v. C., R. I. & P. Ry. Co.*, 17 I. C. C., 54, and *Ottumwa Commercial Asso. v. C., B. & Q. R. R. Co.*, 17 I. C. C., 413, which came on for disposition after our report in *Burnham-Hanna-Munger Co. v. C., R. I. & P. Ry. Co.*, *supra*, was announced, and before we had considered the complaint in *Warnock Co. v. C. & N. W. Ry. Co.*, *supra*, we reduced by substantial amounts the through charges from eastern points on first class traffic to Des Moines and

28 I. C. C.



on first and second class traffic to Ottumwa; but neither case involved the rates of other points in Iowa. Our orders in the two cases were complied with by the defendants; but they did not extend the underlying principle of our reports to the rates of other towns in Iowa, or make any changes in their rate schedules except such as were unavoidably required. As a matter of fact, the compliance of the carriers with the orders in those cases was so literal that the eastbound rates from Des Moines and Ottumwa have remained unchanged and are still on the same basis that we there condemned in respect of the westbound rates to those points.

It will thus be seen that, although we have fixed the through rates to the Missouri River on a basis that has been accepted by the carriers and on a principle that has been judicially approved in *Interstate Commerce Commission v. C., R. I. & P. Ry. Co.*, 218 U. S., 88; and, although we have required rate reductions to two important towns in the state, the general scale of rates to interior Iowa points remains practically unchanged and to-day is on the same basis that has been in effect for many years. We repeat, therefore, that the real question on this record is whether the rates to interior Iowa shall be readjusted so as to conform to the principles laid down, and bear some relation to the standard fixed, in *Warnock Co. v. C. & N. W. Ry. Co.*, *supra*. We state the issue in that form because nothing has developed on the record now under consideration that is suggestive of any error in the conclusions reached in that case, or that shows the need of further reductions in the through charges of the defendants to the Missouri River. We do not understand in fact that the Iowa interests by which these complaints were presented seriously contend that the present through charges to the Missouri River are excessive. It seems therefore necessarily to follow from this state of affairs that the Missouri River rates must be regarded as forming something of an established base line from which we must look back upon the interior Iowa rates and by which, as more or less of a standard, we must consider the reasonableness of those rates, bearing in mind at the same time the rates to the upper Mississippi crossings which we have fixed for the future in the case immediately preceding this report.

This brings us to an explanation of the manner in which the present rates to and from interior Iowa points are constructed and published. Although the through charges are based on the sum of the intermediate rates, the earnings on the traffic are not divided east and west of the river on any such basis. A single example will suffice to explain, and, for convenience, Iowa City may be taken as an illustrative point. The local first-class rate from New York to the river is 97 cents; the local first-class rate to Iowa City from the

nearest river crossing, which in this case is Muscatine, is 18.8 cents per 100 pounds. Under the principle on which the whole rate adjustment is built, the sum of these two rates, or \$1.158, is the maximum charge that may be exacted on the through movement, there being no other basing point on which a lower combination of intermediate rates is made. The carriers have therefore made that the actual through charge per 100 pounds from New York to Iowa City. It is not published, however, as a joint through rate. Nor are the local rates to and beyond the river—97 cents and 18.8 cents, respectively—applied to the movement; the local rates are altogether disregarded except as their sum is used to measure the through charge. As the lines east of the river have published a proportional rate of 88 cents, applicable on through traffic whatever may be its destination west of the river, the lines west of the river are left with an opportunity, still keeping within the sum of the intermediate rates, to demand the balance of the through charge, or 27.8 cents, as their proportional rate to Iowa City. It will be observed that this is 9 cents in excess of the local rate from the nearest river crossing. This relation between the proportional and local rates from the river is characteristic of the whole rate structure, the proportional rate from the river crossing, on through traffic to a given interior point, being usually higher than the local rate from the river to that point.

The principle underlying the rates to and from interior Iowa is (a) to equalize the through charges over all the reasonably direct routes, and (b) to make the through charges substantially on the combination of intermediate rates on the Mississippi River. In the accomplishment of this object another remarkable rate feature is developed and must be explained before the structure may be understood:

In this and the preceding case we have taken New York as typical of the Atlantic seaboard and have stated the rates from that point to the river and points beyond. The local and proportional rates to the river from other points east of the Indiana-Illinois state line are adjusted in a similar manner. In other words, points of origin in the east take proportional rates to the upper crossings that are the same as the local rates to the lower crossings; and these proportionals to the river apply on all through traffic regardless of the point of destination beyond the river. For example, the proportional rate from Columbus to all the crossings, both lower and upper, is 46 cents, whether the traffic is destined to Omaha, Des Moines, Iowa City, or elsewhere in the state. That is also the local rate from Columbus to the lower crossings; but its local rate to the upper crossings is 59 cents. The local rate to the upper crossings is 69

cents from Pittsburgh, 55 cents from Saginaw, and 52 cents from Indianapolis. The local rates of these points to St. Louis are, respectively, 56½, 46, and 38 cents. The latter rates are therefore the proportional rates from these points to the Mississippi River on traffic moving through the upper crossings to any point of destination beyond the river. These local and proportional rates to the upper crossings from the points mentioned, and the local and proportional rates from other points east of the Indiana-Illinois state line, are established on a basis that fairly expresses the differences in the length of the respective hauls to the river, and therefore in the cost and value of the service. The special feature in the system, however, to which we wish to direct attention is that the proportional rates of the initial lines from all eastern points to the river are applied without regard to the destination of the traffic beyond the river. On the other hand, the delivering carriers west of the river have made the point of origin in the east a direct factor in fixing the amount of their proportionals. That is to say, although the haul west of the river to a given point in the interior of Iowa must necessarily be over the same rails whether the shipment originates at New York, Pittsburgh, or Columbus, and although there can be no difference in the cost to the carrier of that particular part of the through service, nevertheless the proportional rates west of the river vary according to the point at which the traffic originates. The carriers to the river fix their rates in strict relation to their own service and give no heed to the length of the haul west of the river. But the carriers west of the river fix their proportional rates in some relation to the length of the haul east of the river. They reach back into the territory of origin, which is not touched at all by their own rails, and although their service west of the river to a given point in interior Iowa is the same in any case, they nevertheless assess a different proportional rate according as the shipment may originate in one group or another of 10 separate and defined territories of origin which they set up in their tariffs. These groups are wholly unknown to the eastern lines, not being mentioned in their tariffs.

The manner in which this rate system works out may be illustrated by referring again to through shipments from the east to Iowa City. The proportional rates west of the river on first-class through traffic from the east to that point vary from 25.8 cents when originating in group 2 to 32.8 cents when the traffic originates in group 8. And yet wherever the shipments originate the service to Iowa City from a given river crossing is exactly the same, being over the same rails. The necessity for establishing groups of origin in the east, taking varying proportionals west of the river, arises from the principle

underlying the through charges, namely, that they must not exceed, and in all cases must approximate as closely as possible, the sum of the intermediate rates on the Mississippi River. As the rates between Iowa City and the east have not been affected by any order of the Commission, a table of the proportional rates, applying west of the river on traffic to that destination, is here inserted by way of further illustrating this rate system; and for purposes of comparison the local rates from the nearest crossing, Muscatine, and from the crossing over which the traffic to Iowa City usually moves, Davenport, are shown:

Group.	Typical point of origin.	Classes.									
		1	2	3	4	5	A	B	C	D	E
1	New York.....	27.8	24	19.5	15.4	10.6	11.6	10.6	9.6	8.7	7
2	Syracuse.....	25.8	24	19.5	14.4	10.6	10.6	10.6	9.6	8.7	7.9
3	Pittsburgh.....	31.3	27.5	22.5	16.8	11	12.6	11.6	10.6	9.7	7
4	Dayton.....	30.8	29.5	25	19.4	11	14.5	13.1	12.1	10.6	7.5
5	Saginaw.....	27.8	26.5	21.5	16	10.5	12	10.5	9.5	7.5	4.5
6	Detroit.....	27.8	26.5	22	16.9	12.1	13.6	11.1	10.1	9	6
7	Grand Rapids.....	27.8	26.5	22	17	12.1	12.6	12.1	11	9	6
8	Legansport.....	32.8	30.5	25.5	18.9	13	14.1	13.1	12	10	7
9	Fort Wayne.....	31.3	29	24	18.4	12	13	12	11	9.5	7
10	Cincinnati.....	32.2	31.5	27	20.9	14	15.6	14.1	13	11	8.5
	Local from Muscatine.....	18.8	16	12.5	9.4	6.6	6.6	6.6	5.6	4.7	3.8
	Local from Davenport.....	20.4	17.3	13.6	10.2	7.1	7.2	7.1	6.1	5.1	4.1

It may be well here to explain that the proportional rates on through traffic apply to and from the east bank of the river, while the local rates from the east apply to both banks of the river. On the other hand, the local rates from the river usually apply from the west bank only. These local rates are known as the Iowa distance tariff rates, and this tariff is filed with this Commission and is applied on certain interstate traffic. Under it the local rates to a given interior point from the several river crossings vary in accordance with the distance. But on through traffic the local rate from the nearest crossing is the factor used in measuring the through charge, and not the local rate from the crossing over which the traffic may actually move. The proportional rate, however, from all the crossings is the same. In the case of Iowa City the local rate from Muscatine, under the distance tariff, is 18.8 cents, as heretofore stated. This is the rate that is used in ascertaining the through charges, although through shipments to Iowa City usually move over the Davenport crossing, from which point the local rate is 20.4 cents.

For such additional light as it may throw on this system of rates we attach hereto a table showing the differences between the proportional first-class rates, applied from the river crossings on through traffic from the 10 defined groups mentioned above, and the local rates

from Muscatine, the nearest crossing, and from the Davenport crossing over which the traffic ordinarily moves:

*First-class rates to Iowa City.*

	Groups of origin.									
	1	2	3	4	5	6	7	8	9	10
Proportional rate.....	27.8	25.8	31.3	30.8	27.8	27.8	27.8	32.8	31.3	32.2
Local from Muscatine.....	18.8	18.8	18.8	18.8	18.8	18.8	18.8	18.8	18.8	18.8
Difference.....	9	7	12.5	12	9	9	9	14	12.5	12.4
Proportional rate.....	27.8	25.8	31.3	30.8	27.8	27.8	27.8	32.8	31.3	32.2
Local from Davenport.....	20.4	20.4	20.4	20.4	20.4	20.4	20.4	20.4	20.4	20.4
Difference.....	7.4	5.4	10.9	10.4	7.4	7.4	7.4	12.4	10.9	11.8

There remains to be mentioned another peculiar feature of the rate adjustment that adds to its complexity. It arises out of the differences in the classifications in force east and west of the river. In the official classification there are six numbered classes, while in the western classification there are five numbered and five lettered classes. The local and the proportional rates to the river from the east are fixed for six numbered classes; the local rates and the proportional rates west of the river are fixed for five numbered and five lettered classes. The two classifications therefore have to be matched in order to arrive at a basis for the through charges. This has been worked out as follows:

Official classification...	1	2	3	4	5	6	6	6	6	6
Western classification..	1	2	3	4	A	5	B	C	D	E

When to the complexities of this rate system is added the further fact that the westbound class rates to the river differ slightly from the eastbound rates from the same river points, and therefore involve the necessity of different proportional rates eastbound from interior points to the river, we have a rate structure that is, with reason, complained of as unnecessarily cumbersome and confusing. It is doubtless a credit to the ingenuity of the rate makers, but it is nevertheless a source of perplexity to the shipper. The record shows also that in the rates themselves are to be found, possibly as a necessary consequence of such a system, many violations of the fourth section. It is also apparent that it results in numerous vexations to shippers in the matter of undercharges and overcharges. For all these reasons we are earnestly urged in the second of the above-entitled complaints to require the carriers to put in a system of joint through rates between interior Iowa and all points east of the Indiana-Illinois state line. There are strong grounds for taking that course, but it would

involve extending the official classification to the Missouri River. Such a system of rates would not be practicable while that classification governs only to the Mississippi River and the western classification governs beyond. And from the view that we take of the case, and the disposition that we shall make of it, joint through rates, which, after all, are simply one method of stating the through charges, will not be necessary. A single proportional to the river and a single proportional beyond makes a rate system easily understood and simple in application. The shipping public is entirely familiar with basing-point rates of that kind, and they perform a useful function in minimizing the size and complexity of tariff publications.

The complainants contend, among other things, that a proportional rate that exceeds the local rate is in itself unlawful, and that proportional rates which vary with the point of origin are also unlawful in and of themselves. These and other contentions are advanced by the complainants on the theory that a proportional rate can be examined and condemned by the Commission without regard to the reasonableness of the through charge of which it is a factor and without regard to its relation to that through charge. This theory is entirely consistent with the proposition that Des Moines, for example, may admit that its through class rates from the east are just and reasonable, but may nevertheless demand a reduction in the rates applicable west of the river on the through movement. We can not accept that as sound doctrine. A shipper has no legal grievance with respect to his through traffic unless compelled to pay excessive charges for the through service. If the through charges are lawful in the sense that they are reasonable charges for the through service, a shipper can not predicate unlawfulness of one of the component parts of the through charges by alleging that it is excessive compensation to that carrier for that part of the through service. He pays for the completed service, and it is no concern of his how the through charges are divided among the carriers, whether by agreement or by published proportionals, so long as the through charges for the through carriage are reasonable. The futility of a finding that a proportional rate is excessive, in the absence of a finding also that the through charges are excessive, is clear, for by so much as we may reduce the proportional rate of one carrier another carrier in the route may increase its proportional rate, thus leaving the through charges unaffected by our order. It does not follow, however, that a carrier's separate rates applicable to through transportation are beyond control and regulation by the Commission. On the contrary, it not infrequently happens, as in this case, that the through charges for the through service are unreasonable because one of the proportionals entering into the through charges is excessive; and in su

case and upon a proper record our authority to reduce the unreasonable through charges by reducing the excessive proportional rate is beyond question. The reasonableness of the through rates is challenged, however, by some of the complainants, and that question is before us on the pleadings and on the record, and is the question that is more particularly dealt with in this report.

In support of the various contentions of the complainants a large volume of testimony was offered, together with numerous diagrams, plats, and other exhibits, financial and otherwise, by means of which the facts are graphically represented. Although the eastern defendants took no active part in the hearing the defense by the western lines was prepared with care. All the points to which these exhibits and testimony were directed have had careful consideration, but it is not possible and would not be profitable to extend this statement of the case by a discussion of them in detail. It will suffice to say that upon the whole record we have arrived at the conclusion, and so find, that the rates on class traffic moving between interior Iowa points and the territory east of the Indiana-Illinois state line are excessive and unreasonable, and therefore unlawful. The proportional rates between the Mississippi River and the eastern territory last defined are in harmony with the general system of rates east of the river, and there is no basis of record for condemning that factor in the through charges. The through rates exacted of shippers are made excessive by reason of the demands of the carriers west of the river, and this is the factor in the through charges that we here condemn in finding that the through charges are excessive. In reaching this conclusion we do not overlook the fact that the lines that we have here spoken of as the western carriers usually receive the traffic at Chicago or other junction point east of the river and therefore participate in the haul and make earnings east of the river. Nor have we overlooked the fact that their total earnings from the junction at which they receive the traffic, to the particular interior point, ordinarily are less than their local rates from the junction to the interior point. There is also an element of undue discrimination in the rates to many points in the interior of the state when compared with the rates to points on the two rivers. The carriers themselves are aware of many instances in this rate structure where the through charges exceed the sum of the intermediate rates and it will not be necessary therefore to set them out in detail; it will suffice to say that we find all such rates unlawful under section 4. We shall not undertake, however, to enter an order at this time prescribing the rates for the future on a basis that we regard as reasonable, but shall look to the defendant carriers to propose a system of single proportional rates, applicable west of the river on through

traffic moving in both directions that shall bear a reasonable relation to the proportional rate of 55 cents fixed by the Commission in *Warnock Co. v. C. & N. W. Ry. Co.*, *supra*, on through traffic moving to and from the Missouri River. Taking the Missouri River as a starting point that proportional rate between the rivers, when graded back across the state in a proper and logical way, ought to produce a set of proportional rates which, used in connection with the proportional rates east of the river, will yield reasonable through charges to and from interior Iowa points. As is ordinarily the case with basing-point rates there will be something of a "rate hump" west of the river. Because of the rigid character of the Iowa distance tariff and certain of its other features some difficulties may be encountered in adjusting the rates of particular points. But we shall expect the defendants participating in this through traffic west of the river to prepare and submit such a schedule of rates to us by October 1 next. Until that time the record and all its features will be held open.

As we read these complaints they also involve commodity rates. In separate complaints in which the records have not yet been completed certain named commodity rates are alleged to be unreasonable. The whole system of commodity rates differs from the class rates in that west of the river there is a single commodity proportional applicable on all through commodity traffic without regard to the point of origin in the east. In the schedules of rates which the carriers will submit to us on October 1 next, as required herein, it will be well for them to embrace the commodity rates or at least to give a clear indication of some basis upon which their commodity rates will be brought in line with the principles upon which we here require the class rates to be readjusted.

The Chicago rates to Iowa points, which are also complained of here, are dealt with in a separate report that follows. There are some other phases of these complaints that we are not prepared at this time to consider. For example, it is alleged that the rates from Des Moines to St. Joseph and Kansas City are unreasonable. The main exhibit of record upon which this contention is based is not decipherable. It is also alleged that the rates between interior Iowa and certain points in Minnesota, the Dakotas, and the northwest are unreasonable. We shall not deal with any of these questions at this time. The record is not complete with respect to these matters and they have not been argued adequately; those issues ought really not to have been included in this group of cases. All these questions will therefore be reserved and may be called to our attention again after the rate readjustments here required have been made effective.

Included in all these complaints is a prayer for reparation. We must not be understood, however, in what is said in the foregoing



pages, as making any finding with respect to the past transactions between shippers and these defendants or with respect to the reasonableness of these rates in the past, but only as finding that the continuance of these rates for the future will make through charges that are excessive and unreasonable. As in *Warnock Co. v. C. & N. W. Ry. Co.*, 21 I. C. C., 546, reparation will not be allowed in consequence of the findings and order herein.

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No. 3068.

CEDAR RAPIDS COMMERCIAL CLUB

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

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No. 4447.

FORT DODGE SHIPPERS ASSOCIATION

v.

CHICAGO GREAT WESTERN RAILROAD COMPANY.

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No. 3464.

STATE OF IOWA ET AL.

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY  
COMPANY ET AL.

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*Submitted March 21, 1913. Decided June 17, 1913.*

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The class rates between Chicago and points on the Missouri River are adjusted on an 80-cent scale, and between Chicago and points on the Mississippi River in Iowa on scales of from 37.5 to 41.7 cents. Upon complaint on behalf of the cities in the interior of the state of Iowa; *Held*, That the rates between such interior points and Chicago are unreasonable and unduly discriminatory in comparison with the rates to the river towns, and the carriers are required to submit to the Commission for approval a revised basis of such rates grading the 80-cent Missouri River scale back across the state. Reparation denied.

28 I. C. C.

*George Cosson, attorney general, C. A. Robbins, J. H. Henderson, and Dwight N. Lewis* for the State of Iowa and other complainants.

*Clifford Thorne* for Board of Railroad Commissioners of Iowa.

*N. T. Guernsey* for Greater Des Moines Committee and others.

*E. J. Breen* for Fort Dodge Shippers Association.

*C. C. Wright* for Chicago & North Western Railway Company.

*A. P. Humburg and R. V. Fletcher* for Illinois Central Railroad Company.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*W. F. Dickinson and Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

*T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

*G. B. Winston* for Chicago Great Western Railway Company.

*George W. SeEVERS* for Minneapolis & St. Louis Railroad Company.

*N. S. Brown* for Wabash Railroad Company.

*O. E. Butterfield* for New York Central lines.

#### REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

In the preceding report, *ante*, p. 64, we have disposed of the chief issue in the third of the above entitled complaints. The conclusion there reached also disposes in part of the first of these complaints. There remains for consideration, however, the further issue raised in these proceedings, namely, whether the rates between Chicago and cities in the interior of Iowa are reasonable and nondiscriminatory. The rates involved apply not only to and from Chicago but from points taking Chicago rates or differentials under or over the Chicago rates. The principal carriers in the state of Iowa have their own rails to Chicago and the rates here dealt with are therefore for the most part local rates of individual carriers. But all the rates are specific rates and are not made by a combination on the river as is the case with the rates applicable on through traffic from points east of the Indiana-Illinois state line.

To the Mississippi River the rates from Chicago are fixed by the Illinois distance tariff; and these rates are applied by the carriers, for geographical and competitive reasons, to the Iowa cities on the west bank of the river. The first-class rate varies from 37½ cents at Clinton and Davenport to 41.7 cents per 100 pounds at Keokuk. To the Missouri River the rate is 80 cents from Chicago. It is alleged in the complaints here before us that, in comparison with the rates from Chicago to the river towns on either side of the state, the rates to interior Iowa points are relatively unreasonable and unduly discriminatory and also that they are in themselves excessive

and unreasonable. Those rates are also attacked as unreasonable and unduly discriminatory in comparison with the rates from Chicago and other points to the twin cities.

The general question at issue here is well illustrated by the conditions set up in the first of these cases where in a separate complaint the Commercial Club of Cedar Rapids alleges that the class rates on the 58-cent scale between that point and Chicago are unreasonable. It is there pointed out that prior to 1906 the local first-class rate from Chicago to Clinton was 47 cents per 100 pounds and that during that year the Illinois commission modified the distance tariff in that state, with the result that the rates to the river towns were reduced by about 10 cents per 100 pounds first class, with reductions also in the lower classes. The carriers made these reductions effective also on their interstate traffic between Chicago and points on the west bank of the river. In their rates between Chicago and Cedar Rapids, however, no change was made, and this is the special point in that complaint. Cedar Rapids is on the Chicago & North Western Railway 219 miles west of Chicago and about 80 miles west of Clinton, where that line crosses the Mississippi River; it is also about 92 miles northwest of Davenport on the Rock Island Railroad. Comparison is made between the present first-class rate of 37½ cents to Clinton and Davenport and the present first-class rate of 58 cents to Cedar Rapids. It is contended that the relation of rates from Chicago, as between Cedar Rapids and the river towns, was a proper one prior to August, 1906, when the local rates to Clinton, Davenport, and the other crossings were reduced, as just explained, as the result of the action of the Illinois state commission, and that the lower scale of class rates from Chicago to the river towns that went into effect at that time gave the latter points, as jobbing centers, an undue advantage over Cedar Rapids and deprived Cedar Rapids of a large part of its distributive territory. On this ground the present relation of rates is alleged to be unduly discriminatory as against Cedar Rapids. It is also urged that the present class rates between Chicago and Cedar Rapids are in themselves unreasonable.

The 80-cent rate from Chicago to the Missouri River yields about 3.2 cents per ton-mile. If this ton-mile average were applied in making the rate for the haul of 219 miles to Cedar Rapids the result would be a rate of about 36 cents per 100 pounds. The rate of 37½ cents for the haul of 139 miles to Clinton yields earnings of 5.4 cents per ton-mile, and on this basis the rate to Cedar Rapids would be 59 cents per 100 pounds. The local rate under the Iowa distance tariff for a haul of 219 miles, the distance as heretofore stated from Chicago to Cedar Rapids, is 43.2 cents per 100 pounds. The rate for hauls of that length under the Illinois distance tariff is 40.2

cents. In other words, for a haul of that distance the local rate in one state is 43.2 cents and in the other 40.2 cents, while the interstate rate for such a haul, partly in one state and partly in the other, is 58 cents. All the facts of record considered, we find the present 58-cent scale of class rates between Cedar Rapids and Chicago to be unreasonable in itself, and also unduly discriminatory when compared with the rates to the river towns competing with Cedar Rapids. In *Greater Des Moines Committee v. C., R. I. & P. Ry. Co.*, 17 I. C. C., 57, we reduced the first-class rate from Chicago to Des Moines from 68 cents to 60 cents, the short-line distance being 358 miles. For the haul of 280 miles from Chicago to Ottumwa we fixed the first-class rate at 56 cents, in *Ottumwa Commercial Asso. v. C., B. & Q. R. R. Co.*, 17 I. C. C., 413. If these precedents are followed the first-class rate to Cedar Rapids ought not to exceed 52 cents.

In the second of these complaints Fort Dodge demands lower rates from Chicago and Chicago rate points, and special emphasis is laid on the first-class rate of 72 cents. Fort Dodge is located on the Illinois Central, only 64 miles northwest of Des Moines and 370 miles from Chicago. In comparison with the rate of 60 cents, fixed by the Commission in the case cited, for the haul of 358 miles from Chicago to Des Moines and with the rate of 80 cents to the Missouri River, and in view of the transportation conditions as they appear of record, we find the first-class rate to Fort Dodge unreasonable and unduly discriminatory. Even when the competitive conditions of the twin cities are taken into consideration the same conclusion must necessarily follow when the 72-cent first-class rate to and from Fort Dodge is compared with the rate of 60 cents from Chicago to the twin cities, a distance of 420 miles, and with the rate of 63 cents from St. Louis to the twin cities, a distance of 576 miles. Although we dismissed the complaint in *Fort Dodge Commercial Club v. I. C. R. R. Co.*, 16 I. C. C., 572, 583, where reductions in the class rates were demanded, we there called attention to the fact that the rates from Chicago to Des Moines were involved in another proceeding then pending, and that any reduction made in the Des Moines rate ought to be reflected throughout the state. Although the first-class rate from Chicago to Des Moines was subsequently reduced from 68 cents to 60 cents in *Greater Des Moines Committee v. C., R. I. & P. Ry. Co.*, *supra*, the carriers made no changes in the class rates to other points in Iowa, except such incidental changes as were required under the fourth section. That the class rates to Fort Dodge are in need of revision is apparent from the fact that the present first-class rate is 72 cents while the second-class rate is 54 cents, a spread that is unduly wide and which must be corrected by a reduction in the first-class rate. The rates on the other classes between Fort Dodge and Chicago are dealt with in the general disposition that we make hereof.

In our report in *Interior Iowa Cities case*, ante, p. 64, we considered only the rates to and from points east of the Indiana-Illinois state line. But as stated therein, the same complaint challenges the local class rates from Chicago and Peoria to all points in the interior of Iowa as unreasonable and discriminatory. In explaining the adjustment of these rates witnesses for the defendant carriers stated that the 60-cent scale of rates from Chicago to the twin cities is applied as a maximum scale of rates from Chicago to points in the eastern portion of Iowa as far west as the line of the Rock Island Railroad passing through Cedar Rapids. West of that line, and as far as the line of the Minneapolis & St. Louis Railroad passing through Marshalltown and Mason City, the 63-cent scale in effect from St. Louis to the twin cities is applied as a maximum scale of rates from Chicago. West of the last-mentioned line the class rates grade up until the Missouri River scale of 80 cents is met some 75 miles east of the Missouri River. The record shows, however, that the twin-city scale of rates from Chicago and St. Louis has been used to fix the rates from Chicago to interior Iowa without reasonable regard to the extent or value of the service. As was said on the argument by counsel for the state of Iowa:

The controlling principle which the testimony of the defendants shows that they have applied to this rate structure has been to ignore all relation between the rate and the service and to make the rate as high as certain applications of the long-and-short-haul clause would permit in view of the rates to points beyond.

It will not be necessary here to consider in any detailed way the respective contentions of the complainants and of the defendants, or to state the proof offered in support of those contentions. Nor will it be necessary to enter into an analysis of the adjustment of of the rates to particular points and name the individual rates that in our judgment are unreasonable or unduly discriminatory. It will suffice to say that upon a careful examination of the record and of the rate schedules themselves we find that the rates in question are excessive and unreasonable and are in need of a revision. We do not condemn the basis of those rates as a whole, nor do we understand or anticipate that our action here will result in extensive reductions in the level of the rates or in the earnings of the carriers. But we think that the rates from Chicago to the Missouri River made on an 80-cent scale should be graded back across the state down to the 37½ to 41.7 cent rates at the Mississippi River. We shall therefore require the defendant carriers, by October 1 next, to submit for our approval a schedule of rates revised and constructed in that manner. In revising the rates due attention must be given to the lower classes; a revision only of the first-class rates will not meet the situation. The result will be a system of rates to the

interior of Iowa built substantially on the general level of the rates fixed by the Commission in *Greater Des Moines Committee v. C., R. I. & P. Ry. Co., supra*, and *Ottumwa Commercial Club v. C., B. & Q. R. R. Co., supra*. In the event the defendants do not propose a fair basis of rates in conformity with the general view here expressed the matter will be gone into by the Commission further and in detail; for that purpose the record will remain open. No order will be entered at this time.

The proof is not sufficient to enable us satisfactorily to deal with the commodity rates that are named on the record. It may be well also to state that in this, as in the preceding cases, we deal with the rates of transportation for the future, and shall not consider the allowance of reparation on the traffic that has moved in the past under the present adjustment of rates.

NOTES.

Co., 19 L. C. C.,  
follows:

No. 4  
CHICAGO MANUFACTURERS  
v.  
ATLANTIC, TOPEKA & SANTA  
FE  
No. 40  
TRAFFIC BUREAU OF THE S  
CLUB E  
v.  
ATLANTIC, TOPEKA & SANTA  
FE

106  
98  
8

128  
111  
17

133  
115  
18

Submitted December 11, 1912

Upon complaint that the class and com-  
mon points and the east are excess-  
ive that the rates from Chicago and the  
by the Commission in *Kindel v. N. Y.*  
and are not shown to be unreasonable  
rate differential between the same po-  
sition the westbound rates; Held, for  
the common points and the Mis-  
souri rates are prescribed for the fu-

Agency of Missouri for Colorado M  
J. J. McKinnon, H. G. Wilson, Geo.  
for Missouri River rates  
J. J. McKinnon, James G. Wilson,  
H. J. Snyder, P. J. Brown, J. J.  
McGee, J. J. McLeod and R. Walker

Report of the C.

Missouri Commission:

These complaints are submitted in  
quoting schedule of rates applying in  
various Chicago common points for  
Missouri River and Chicago. The  
most condensed rates in through to  
by the western lines. The railroads  
are to submit and the Interstate  
Commission

Commission  
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Missouri  
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Missouri  
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5.

The westbound class rates from Chicago and from the Mississippi River to Denver were fixed by the Commission in *Kindel v. N. Y., N. H. & H. R. R. Co.*, 15 I. C. C., 555. The former rates, in cents per 100 pounds, and the rates as then reduced are as follows, for convenience only the five numbered classes being shown:

## CHICAGO TO DENVER.

Class -----	1	2	3	4	5
Former rates -----	205	185	125	97	77
Reduced rates -----	180	145	110	85	67
Reductions -----	25	20	15	12	10

## MISSISSIPPI RIVER TO DENVER.

Former rates -----	185	145	115	92	72
Reduced rates -----	162	127	101	80½	63
Reductions -----	23	18	14	12½	9

No reduction was made in the rates from the Missouri River to Denver, which were then and are now on the following scale:

## MISSOURI RIVER TO DENVER.

Rate -----	125	100	80	65	50
------------	-----	-----	----	----	----

The rates from Chicago and from the Mississippi River to Denver had previously been made on the basis of the full combination of intermediate rates on the Missouri River, and we held in the case cited that the existing rate adjustment, under which the Missouri River was made a basing line for all traffic to Colorado from the east, resulted in an unjust discrimination against Denver and its commercial interests in favor of Kansas City and the other Missouri River crossings. To remove this discrimination and on the general principle laid down in *Burnham-Hanna-Munger Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C., 299, namely, that the rate for a long through haul ordinarily should be less than the combination of two or more intermediate rates between the same points over the same route, we reduced the rates from the Mississippi River and from Chicago as being excessive and, as heretofore stated, left the Missouri River rates untouched.

Although *Kindel v. N. Y., N. H. & H. R. R. Co.*, *supra*, was decided on March 2, 1909, the order was enjoined by the courts and the reduced rates therefore did not become effective until October 26, 1910, after the validity of our conclusions had been sustained by the Supreme Court in *Interstate Commerce Commission v. C., B. & Q. F. R. Co.*, 218 U. S., 113. In the meantime, on June 7, 1910, in *Com-*  
28 I. C. C.



*mercial Club of Salt Lake City v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218, we reduced the class rates to Salt Lake City as follows:

## MISSOURI RIVER.

Former-----	205	175	153	128	106
Reduced-----	190	162	142	119	98
Reductions----	15	13	11	9	8

## MISSISSIPPI RIVER.

Former-----	235	220	188	155	128
Reduced-----	227	189	163	134	111
Reductions----	38	31	25	21	17

## CHICAGO.

Former-----	285	240	198	160	133
Reduced-----	245	207	172	139	115
Reductions----	40	33	26	21	18

The class rates to Salt Lake City, as fixed by the Commission, were made applicable likewise upon eastbound movements; commodity rates on a great many articles were also required by the Commission to be established or reduced in amount. The action taken with respect to the Salt Lake City rates therefore was broader than our previous action in relation to the Colorado common point rates.

The differentials between the rates from Chicago and the rates from the Mississippi River to Colorado common points, as fixed in *Kindel v. N. Y., N. H. & H. R. R. Co.*, *supra*, are practically the same as the differentials in the rates from the same points that were later fixed by the Commission to Salt Lake City. They are as follows:

## DIFFERENTIALS, CHICAGO RATES OVER MISSISSIPPI RIVER RATES.

To Colorado-----	18	18	9	4½	4
To Utah-----	18	18	9	5	4

The differentials between the Chicago rates and the Missouri River rates to Colorado common points and to Utah common points are identical and are as follows:

## DIFFERENTIALS, CHICAGO RATES OVER MISSOURI RIVER RATES.

To Colorado and Utah-----	55	45	30	20	17
---------------------------	----	----	----	----	----

There is practical identity also in the differentials in the Mississippi River rates over the Missouri River rates; they are as follows:

## DIFFERENTIALS, MISSISSIPPI RIVER RATES OVER MISSOURI RIVER RATES.

To Colorado-----	37	27	21	15½	13
To Utah-----	37	27	21	15	13

The complaint of the commercial associations of Sioux City, St. Joseph, Omaha, and Kansas City was filed on April 10, 1911, or a few months subsequent to the publication by the carriers of the reduced rates from Chicago and the Mississippi River to Denver. Their attack is directed against the class rates to Colorado, which are alleged to be excessive in themselves and unjustly discriminatory against the Missouri River jobbers and in favor of competitors in the east as well as in Colorado. The complaint in due course was set for hearing, but a continuance was had when it developed that a further complaint was in preparation by the Colorado Manufacturers' Association, whose petition was filed in January, 1912. Thereafter the two cases were heard on one record.

The Colorado Manufacturers' Association is a corporation affiliated with the Chamber of Commerce of Denver. While there are other issues that will be referred to hereinafter, its complaint is primarily directed against the class rates in both directions between Denver and other Colorado points and cities on the Mississippi and Missouri rivers and Chicago. The rates are alleged to be unreasonable in and of themselves, and relatively unreasonable and unduly discriminatory as compared to the rates enjoyed by Salt Lake City, on traffic to or from the same territories of origin and destination. The specific prayer of the complaint is for the following class rates, omitting for convenience the five lettered classes:

PROPOSED RATES BETWEEN COLORADO COMMON POINTS AND

Chicago .....	155	125	95	72	57
Mississippi River.....	137	107	85	67	53
Missouri River.....	100	80	64	52	40

The proposed rates are less than the present westbound rates by the following amounts:

PROPOSED REDUCTIONS WESTBOUND.

From Chicago.....	25	20	15	13	10
From Mississippi River.....	25	20	16	13½	10
From Missouri River.....	25	20	16	13	10

In the case of traffic to the Mississippi River and Chicago the proposed reductions in the eastbound rates will be much more severe, because the rates in that direction were not reduced in *Kindel v. N. Y., N. H. & H. R. R. Co., supra*:

PROPOSED REDUCTIONS EASTBOUND.

To Chicago .....	50	40	30	25	20
To Mississippi River .....	48	38	30	25	19
To Missouri River .....	25	20	16	13	10

The complainant, the Colorado Manufacturers' Association, also demands a reduction in the rates from Peoria and from other points

28 L. C. C.

taking rates that are based on Chicago. The establishment is also sought of commodity rates on the articles on which such rates were established or reduced by the Commission to Salt Lake City. There are about 150 such commodities.

The Colorado Manufacturers' Association contends that the existing rates are shown to be excessive by a comparison with the rates fixed by the Commission to Salt Lake City. The short-line distance from the Missouri River to Denver, 538 miles, is approximately 52 per cent of the distance from the Missouri River to Salt Lake City, 1,037 miles. But the rate to Denver is 66 per cent of the rate to Salt Lake City from the Missouri River. From Chicago the rate is \$1.80 for 1,018 miles to Denver and \$2.45 for 1,527 miles to Salt Lake City. In other words, as the complainant says:

For the first two-thirds (1,018 miles) of the haul, over prairie country, with greater density of traffic, the railroads receive \$1.80, and for the remaining one-third (509 miles), over a mountain country, with less density of traffic, they receive only 65 cents more. This could only be justified on the theory that a mountain haul, with less density, is more desirable from the railroad standpoint than a prairie haul with greater density.

That complainant in its proof does not go into the transportation conditions in great detail, but in a general way asserts that there is a greater density of traffic to Colorado than to Utah and that the operating conditions are distinctly more favorable in Colorado than in Utah.

The further contention of the complainants is that the rates to Colorado common points are discriminatory in favor of jobbers at Salt Lake City and also at Chicago and on the Mississippi and Missouri rivers. It is asserted that this is shown by the rate limitations on the manufacturers and jobbers of Colorado in marketing their goods in territory naturally tributary to them, but to which their competitors have more favorable rates. They assert that a considerable number of eastern jobbers maintain selling agencies in Denver and the other Colorado cities at which a large volume of business is done, but no stocks are carried. They say that for a short time a partial measure of relief was afforded to Denver by the reductions in the rates effected in *Kindel v. N. Y., N. H. & H. R. R. Co., supra*, but that this measure of relief has been wholly dissipated by the reductions given to the Salt Lake jobbers in *Commercial Club of Salt Lake City v. A., T. & S. F. Ry. Co., supra*.

In this case, as in other recent cases before the Commission involving western rates, much is said about the theory of equalizing so-called jobbing combinations; in other words, that jobbers buying their goods at a common source of supply and selling them in a common market of consumption should be able to do so on a relatively fair, if not equal, aggregate of inbound and outbound transportation

charges. As applied to this case the theory is that the carload rate from Chicago or from the Mississippi River to Denver plus the less-than-carload rate from Denver to Grand Junction or other consuming points ought not to exceed by more than a reasonable margin the similar combination on the Missouri River, and also ought not to exceed the through less-than-carload charge direct to Grand Junction. The difference between the overhead or through rate and the combination on a jobbing point, such as Denver, is referred to by the complainant as a "reload" charge. The complaint is that in the case of Denver the cost of the "reload" runs as high as 79 cents, whereas it should not exceed 25 cents.

In the past six years the first-class rate has been reduced from Chicago to Salt Lake City by 65 cents, and from Chicago to Denver only 25 cents. From the Mississippi River the rate to Salt Lake City has been reduced in the same period by 63 cents and only 23 cents to Denver. From the Missouri River the rates to Salt Lake City have been reduced by 40 cents and no reduction has been made to Denver. It will be seen, therefore, that in its relation to the Salt Lake City rates Denver is on a 40-cent higher scale of rates than it was six years ago.

The complainants at the Missouri River contend that their rates to Colorado are excessive and discriminatory. In support of the charge of the unreasonableness of the rates they rely on the language of the Commission in *Kindel v. N. Y., N. H. & H. R. R. Co.*, 15 I. C. C., 555, 565.

As has been seen, the class rates from the Missouri River to Denver, short-line distance 538 miles, are on a scale of \$1.25 per 100 pounds, first class, and from Denver to Utah common points, about 650 miles, they are on a scale of \$1.64 per 100 pounds, first class. Measured by any test these rates are in both instances unreasonable and excessive. It seems obvious that they must be revised, either by voluntary action of the carriers in conformity with the principles announced in the *Spokane case*, *supra*, or in some other proceeding before this Commission. For that reason no reduction of those rates will be ordered in this case, although upon the record we are convinced that they are unwarrantably high, and that reasonable reduction therein would not work any undue reduction in the revenues of defendants.

The complainants point out that in that case the Commission made a close study and careful statement of the transportation conditions surrounding the traffic from the Missouri River to Denver and warned the carriers in plain language that reductions ought to be made. The complainants on the Missouri River, therefore, were content with introducing some evidence to show that the existing conditions are substantially as found by the Commission in that case, and that if there has been any change the conditions are now more favorable, so that a lower basis of rates is called for. The only question in the case, as the complainants on the Missouri River say, is

taking rates that are based on Chicago. The establishment is also sought of commodity rates on the articles on which such rates were established or reduced by the Commission to Salt Lake City. There are about 150 such commodities.

The Colorado Manufacturers' Association contends that the existing rates are shown to be excessive by a comparison with the rates fixed by the Commission to Salt Lake City. The short-line distance from the Missouri River to Denver, 588 miles, is approximately 52 per cent of the distance from the Missouri River to Salt Lake City, 1,087 miles. But the rate to Denver is 66 per cent of the rate to Salt Lake City from the Missouri River. From Chicago the rate is \$1.80 for 1,018 miles to Denver and \$2.45 for 1,527 miles to Salt Lake City. In other words, as the complainant says:

For the first two-thirds (1,018 miles) of the haul, over prairie country, with greater density of traffic, the railroads receive \$1.80, and for the remaining one-third (509 miles), over a mountain country, with less density of traffic, they receive only 65 cents more. This could only be justified on the theory that a mountain haul, with less density, is more desirable from the railroad standpoint than a prairie haul with greater density.

That complainant in its proof does not go into the transportation conditions in great detail, but in a general way asserts that there is a greater density of traffic to Colorado than to Utah and that the operating conditions are distinctly more favorable in Colorado than in Utah.

The further contention of the complainants is that the rates to Colorado common points are discriminatory in favor of jobbers at Salt Lake City and also at Chicago and on the Mississippi and Missouri rivers. It is asserted that this is shown by the rate limitations on the manufacturers and jobbers of Colorado in marketing their goods in territory naturally tributary to them, but to which their competitors have more favorable rates. They assert that a considerable number of eastern jobbers maintain selling agencies in Denver and the other Colorado cities at which a large volume of business is done, but no stocks are carried. They say that for a short time a partial measure of relief was afforded to Denver by the reductions in the rates effected in *Kindel v. N. Y., N. H. & H. R. R. Co., supra*, but that this measure of relief has been wholly dissipated by the reductions given to the Salt Lake jobbers in *Commercial Club of Salt Lake City v. A., T. & S. F. Ry. Co., supra*.

In this case, as in other recent cases before the Commission involving western rates, much is said about the theory of equalizing so-called jobbing combinations; in other words, that jobbers buying their goods at a common source of supply and selling them in a common market of consumption should be able to do so on a relatively fair, if not equal, aggregate of inbound and outbound transportation

The defense of the carriers to these cases is, first, that the complainants have not sustained the burden of proving the unreasonableness of the rates and have not made out a case for the reductions asked for, which are drastic and unusually severe not only in themselves but in their effect on intermediate rates. They assert that the loss of revenues to the carriers, if the rates are reduced as demanded, will be not less than \$2,000,000 per annum, and that their earnings in the aggregate from all traffic already yield less than a sufficient return on their investment. The defendants offered proof of the impossibility of recouping this loss by increases in rates on other traffic. To sustain the reasonableness of the present rates the carriers show that the rates to Colorado compare quite favorably with the rates to Texas common points, as passed upon by the Commission in the *Southwestern Rate Advance case, Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463. They compare the operating conditions east and west of the Missouri River, go into the history of the rates, and offer various comparative statements of the rates and earnings per ton per mile, all to show the reasonableness and nondiscriminatory character, as they contend, of the present rate adjustment.

Upon a careful examination of the record we do not find that the class rates of the defendants from Chicago and from the Mississippi River to Colorado common points are unreasonable or unduly discriminatory. Those rates were fixed by the Commission in *Kindel v. N. Y., N. H. & H. R. R. Co.*, *supra*. That decision is of comparatively recent date; and, although the rates seem to be high when compared with rates for similar distances in eastern territory and doubtless must finally be reduced substantially in amount, the time has not yet come for such action. We are of opinion, however, and so find, that the rates eastbound from Denver and the other Colorado common points to Chicago and to the Mississippi River are excessive and unreasonable, and that reasonable rates for the future will not exceed the following, in cents per 100 pounds:

Class.....	1	2	3	4	5
To Chicago.....	180	145	110	85	67
To the Mississippi River....	162	127	101	80½	63

Between the cities on the Missouri River and Denver the record clearly shows that the rates are not only unreasonable but unduly discriminatory, and we so find. The following rates are prescribed as reasonable rates to apply as maximum rates for the future, in both directions:

BETWEEN THE MISSOURI RIVER AND DENVER.

Rate----	115	92	74	60	47
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## COMMODITY RATES.

As heretofore stated, the Colorado Manufacturers' Association presents a long list of articles on which they desire the establishment of or reductions in the special commodity rates to the Colorado common points from Chicago and the Mississippi River as well as from the Missouri River. With one or two exceptions, Salt Lake City enjoys special rates on these commodities as the result of our decision in *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., supra*. The record shows that there is little, if any, substantial need for these rates on a considerable number of the commodities named, and on others the proof is entirely insufficient to warrant us in fixing the rates prayed for. On the record, however, we find that the present rates applied on many commodities when moving to Colorado common points are unduly discriminatory in comparison with the rates applied on the same commodities when moving to Salt Lake City. There is need of a revision of the whole schedule of commodity rates to Colorado points. We shall not at this time, however, attempt a full statement with respect to the commodity rates, but shall look to the defendants to present for approval not later than October 1 a modified schedule of rates on specific commodities from Chicago and the Mississippi and Missouri rivers to common points in Colorado.

## NEW ORLEANS RATES.

For many years prior to 1910 the class rates from Chicago to Colorado common points were applied by voluntary action of the Illinois Central and other defendants from New Orleans to Colorado common points. But the rates from Chicago as reduced by the Commission in *Kindel v. N. Y., N. H. & H. R. R. Co., supra*, were not applied from New Orleans; the old basis of Chicago rates is still in effect on class traffic. The haul from New Orleans is substantially longer than from Chicago, and upon the record we are not prepared to find the present class rates to be unreasonable or unduly discriminatory in comparison with other rates named on the record.

## SEA AND RAIL DIFFERENTIALS.

The class rates and the commodity rates between Denver and points on the Atlantic seaboard, by the ocean-and-rail routes through the so-called south Atlantic ports, including Norfolk and Savannah, are the same as the rates from the same points by the ocean-and-rail route through Galveston. The latter route is composed of a longer ocean haul and a shorter rail haul than the routes through the south Atlantic ports. For that reason, as well as upon other grounds, the

complainants ask the Commission to fix a just and reasonable differential between the ocean routes through Savannah and Norfolk and the ocean route through Galveston. The rates by both routes are substantially lower than by the all-rail routes. But it appears from the record that the average time of movements through the south Atlantic ports is substantially less than the time taken over the all-rail routes. This is explained apparently by the special effort put forth by the carriers operating through the south Atlantic ports to maintain an expedited service. The result is a substantial diversion of traffic from the all-rail routes to the routes through the south Atlantic ports. But this phase of the case must be regarded as disposed of by our decision, announced since the hearing herein, in *Southwestern Shippers' Traffic Asso. v. A., T. & S. F. Ry. Co.*, 24 L. C. C., 570, where we held that the through charges by the sea and rail routes from the Atlantic seaboard through the Gulf ports to Denver were not unreasonable.

In all of these cases involving rates to and from Iowa points it must be understood that our findings apply to the rate basis for the future; we do not find that the freight charges heretofore assessed have been unreasonable. It follows that reparation will not be awarded on any traffic that has moved in the past.

An order will be entered to give effect to these conclusions.

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No. 5211.

DILLON COAL & TRANSFER COMPANY

v.

OREGON SHORT LINE RAILROAD COMPANY ET AL.

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*Submitted April 22, 1913. Decided June 19, 1913.*

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Although advised by the Commission that his claim informally presented would be considered only on the formal docket the petitioner took no further action for five years and then filed this complaint; *Held*, That it is barred under section 16 of the act.

*R. L. Varney* for complainant.

*H. A. Scandrett, P. L. Williams, and N. H. Loomis* for defendants.

28 L. C. C.



## REPORT OF THE COMMISSION.

## BY THE COMMISSION:

Complainant, W. T. Scully, was engaged in the retail coal business at Dillon, Mont., from 1906 to 1910, under the name of Dillon Coal & Transfer Company. By petition, filed August 26, 1912, he seeks reparation on certain shipments of coal in 1905, 1906, and 1907, from Rock Springs, Cumberland, and North Kemmerer, Wyo., to Dillon, on which the rate charged was \$4 per net ton. This rate is alleged to have been unreasonable and unduly prejudicial.

The claim was originally filed with the Commission May 6, 1907. It was presented informally by the Commission to the carriers and declined by them. On September 5, 1907, complainant was so notified by the secretary of the Commission and was advised that, if determination of the controversy was desired, it would be necessary for him to file a formal complaint. No further action was taken by complainant prior to the filing of this petition on the date above mentioned.

At the hearing an amended petition was filed which sought to substitute another person as complainant without changing the issues. Objection thereto was entered by the defendants on the ground that the claim of the person to be so substituted as well as the claim of the original complainant are barred by the statute of limitations.

We are of opinion that defendants' contention respecting the statute of limitation is well founded and must be sustained. We hold that having failed to take any action within a reasonable time following notification by the Commission on September 5, 1907, that the claim could not be disposed of informally, complainant thereby abandoned his claim and can not be allowed, five years later, to revive it and urge in support thereof that the running of the statute was barred by the informal presentation of the claim to the Commission in 1907.

An order will be entered dismissing the complaint.

28 I. C. C.

No. 3151.

MANUFACTURERS RAILWAY COMPANY ET AL.

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted January 18, 1913. Decided June 21, 1913.*

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Upon further consideration of this case on supplemental hearing, *Held*, That

1. The Manufacturers Railway, as found in the original report, is a common carrier subject to the act to regulate commerce, but original finding that the trunk lines serving St. Louis are subjecting its shippers to undue prejudice and disadvantage because they absorb the charges of the Terminal Railroad Association, the lines embraced within which they own or control, in order to make delivery on the rails of that association at the St. Louis rate, while refusing contemporaneously also to absorb the rate of the Manufacturers Railway, an independent terminal carrier, reversed.
2. The payments formerly made to the Manufacturers Railway by the trunk lines serving St. Louis out of their through rates were absorptions in compensation for services rendered for the trunk lines, and were in no sense divisions of joint rates for services rendered for the shippers on the Manufacturers Railway, as they would necessarily be considered to be under joint rates prescribed by this Commission.
3. There is a well-defined distinction between absorptions, allowances, and divisions of joint rates, which once recognized in the establishment of the joint rate, will render immaterial the question whether, in this case, the stock of the Manufacturers Railway and of the Anheuser-Busch Brewing Association, its principal industry, is in common or independent ownership, as the latter will then necessarily be treated in all respects upon the same basis as will the shippers located on or served by the Manufacturers Railway who have no interest in that railway or in the brewing association.
4. The present payments to the Manufacturers Railway by the trunk lines serving St. Louis under their absorption tariffs are unlawful and should be canceled.
5. Through routes and joint rates should be prescribed between the trunk lines and the Manufacturers Railway, under which the trunk lines will retain their full rate to St. Louis, the division of the joint rate accruing to the Manufacturers Railway to be paid to it by its shippers, including the Anheuser-Busch Brewing Association, instead of by the trunk lines.

*Nagel & Kirby and Schnurmacher & Rassieur* for complainants.

*Henry L. Stone and W. A. Colston* for Louisville & Nashville Railroad Company.

*Henry E. Stone* for Baltimore & Ohio Southwestern Railroad Company; Chicago, Peoria & St. Louis Railway Company; Illinois Central

Railroad Company; Southern Railway Company; and Wabash Railroad Company.

*D. P. Connell* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

*Edward A. Haid* for St. Louis & San Francisco Railroad Company.

*John G. Williams* for Vandalia Railroad Company.

*Douglas W. Robert* and *Robert & Robert* for Chicago & Alton Railroad Company and Toledo, St. Louis & Western Railroad Company.

#### SUPPLEMENTAL REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

In the original report in this case, 21 I. C. C., 304, we had under consideration the question of the status of the Manufacturers Railway as a common carrier under the act to regulate commerce and its right under that statute to receive and demand from the trunk line carriers serving St. Louis divisions or absorptions out of their joint rates to and from St. Louis on traffic from and to interstate points handled by it as the terminal or originating line. This carrier connects with the trunk lines in South St. Louis and transports carload freight between their termini and points on its line in that city. The principal industry served by it is the Anheuser-Busch Brewing Association, although it reaches numerous other industries by private spurs direct and still others located on or near its line by public team tracks. Prior to March 1, 1910, the trunk lines made an allowance to the Manufacturers Railway of from \$3.50 to \$5.50 per car out of their rates to St. Louis on all traffic received from or destined to points on the rails of that carrier. The cancellation of these allowances on that date gave rise to the complaint, which was filed by the Manufacturers Railway and certain of its shippers including the Anheuser-Busch Brewing Association, that shippers located on the Manufacturers Railway were by that action caused to be subjected to undue prejudice and disadvantage because required to pay its local switching charge of \$2 per car in addition to the St. Louis rate. Simultaneously with the cancellation of these allowances to the Manufacturers Railway the trunk lines also canceled similar allowances to twelve other industrial lines in St. Louis, with which they classed the complainant railway. It does not definitely appear to what extent, if at all, these other twelve lines serve industries or shippers other than the owning industry. A majority of the stock of the Manufacturers Railway is owned by the holders of a majority of the stock of the brewing association, by reason of which and of the additional fact that the brewing association is the principal patron of the railway the defendant carriers contend that the service rendered by the railway for all shippers, and if not for all at least for

the brewing association, is a plant facility service and therefore that the Manufacturers Railway is not a common carrier within the meaning of the act to regulate commerce, entitled to demand or receive divisions or absorptions out of their joint rates to and from St. Louis. On June 21, 1911, the Commission rendered a partial report and decision in the case, in which it held that the Manufacturers Railway was a common carrier within the meaning of the act and that the cancellation of the allowances to it by the trunk lines was unlawful and subjected the shippers located on its rails to undue prejudice and disadvantage and gave to other shippers in St. Louis located on other terminals an undue preference and advantage. The original record was deemed to be an insufficient basis for the determination of the question of the proper amount of the allowances, if any, which should be made to it by the trunk lines or of the reparation, if any, which should be awarded, and those questions were accordingly held open for determination in a supplemental proceeding. At the original hearing the defendant carriers introduced no evidence except by way of cross-examination of complainants' witnesses. At the present supplemental hearing they introduce testimony not only on the questions reserved for decision but on new phases of the controversy as well, which, they contend, are pertinent to the issues involved, and they ask that the Commission review its original findings upon these records as combined.

The Commission does not look with favor upon this method of procedure on the part of defendants before it. It is the duty of each party before the Commission to present his case at the proper time, which ordinarily is at the time of the original hearing. But in view of the additional evidence now presented on all phases of this controversy and of the importance of the questions to be decided in their effect upon the determination of other cases similar in character, it is deemed proper and necessary that we review the case in its entirety upon the record as now supplemented.

The city of St. Louis is built on the west bank of the Mississippi River, opposite to East St. Louis, Ill. With an occasional exception, the streets paralleling the river are numbered consecutively. Four of the streets, one block apart, crossing the numbered streets at right angles, are, beginning on the north, Lynch, Dorcas, Pestalozzi, and Arsenal, and within the rectangular area of some 35 or 40 city blocks bounded by Lynch street on the north, Arsenal on the south, and from First street west to Thirteenth, inclusive, are scattered the various plants, brewhouses, shops, etc., of the Anheuser-Busch Brewing Association, referred to herein as the brewery. The Manufacturers Railway will be referred to as the railway. The tracks within this area are leased by the brewery

to the railway at a rental of \$24,000 annually. The squares bounded by the streets Ninth, Thirteenth, Lynch, and Dorcas; Ninth, Eleventh, Pestalozzi, and Arsenal; and Second, Broadway (Broadway being just south of Seventh), Pestalozzi, and Arsenal are devoted to buildings and yards of the brewery exclusively. Although within these bounded areas there are also others in addition to the three following-named departments, they will, for the sake of convenience, be referred to as the bottling department, Budweiser department, and keg department, respectively. The tracks serving all three of these departments are in and between buildings and sheds of the brewery or in the yards adjoining, and are practically inclosed—on some sides by buildings with passageways between and on the other sides by fences or walls surrounding the yards contiguous to the buildings. All of the tracks within these yards are essential to the operation of the brewery except four team tracks in the yards contiguous to the bottling department at Ninth and Dorcas. As bearing upon the accessibility by the public to these various departments, it may be explained that the tracks in the open yard of the bottling department—that is, on the Ninth and Dorcas streets sides—are inclosed by an iron fence, on which are displayed “No Thoroughfare” signs, and that the four public team tracks in this yard, referred to, end on the edge of an embankment supported by a concrete wall built up from Ninth street, which is some 10 or 12 feet below, and topped with an iron fence; that the tracks at the Thirteenth street side of this department are ended some 10 or 15 feet below the street level by a stone wall and must therefore be reached by entries from other sides; that the team tracks in the Budweiser yard at Ninth and Pestalozzi are inclosed by a high iron fence with swinging gates; and, likewise, that the 25 or more ladder tracks in the yards of the keg department, beginning at Second and Pestalozzi and running west to Broadway, are ended some 25 feet below the level of Broadway by an embankment which is reenforced by a concrete or stone wall topped with an iron fence. As access to the latter department from the Broadway side is thus absolutely impracticable, entrance must be effected from Pestalozzi street or between buildings of the brewery on the Arsenal street side between Second and Broadway.

Although it thus appears that the tracks in these three yards, with the exception noted of the four team tracks in the bottling department at Ninth and Dorcas, are essential to the operation of the brewery, it is contended by the complainant railway that they, in common with all of the rails of the Manufacturers Railway, are available for the traffic of independent shippers as well as for the traffic of the brewery, and at the hearing it introduced in evidence bills of lading and expense bills which showed that shipments have been handled to and from

these yards. The defendant carriers contend, however, that while a car may be occasionally so handled the shipments of patrons other than the brewery can not be set and delivered on those tracks in any appreciable number, because of the extensive business of the brewery, and that those yards were never intended to be open to all shippers alike, pointing to the fact, in support of the latter contention, that the original lease under which these tracks are let by the brewery to the railway, as hereinbefore referred to, provided that such tracks were to be available for the general public only when the handling of outside shipments did not interfere with the conduct of the business of the brewery, of which the brewery was to be the sole judge. This lease, however, following the original hearing in this case, has been amended in this respect, and to-day contains no such limitations; but defendants still urge that this change, in view of the common ownership of the stock of the brewery and of the railway, is immaterial and merely formal in its effect.

It will be borne in mind that in addition to these three departments of the brewery, which furnish most of its traffic, it has other plants, shops, etc., at various other points between Lynch street south to Arsenal and First street west to Thirteenth, inclusive, which has been heretofore described as being the area embracing all of its buildings and plants.

It was to afford a connection principally between these three departments of the brewery and the trunk lines of St. Louis that the railway was originally constructed. Prior to its construction the traffic of the brewery was carted to and from the St. Louis, Iron Mountain & Southern Railway at a point east of First street on the river front. Extensive yards and team tracks of the Iron Mountain parallel the river on its bank a short distance east of First street the entire length of this section of St. Louis. The first main stem of the railway was constructed from the Budweiser department of the brewery at Ninth and Pestalozzi, east along Pestalozzi to a connection with the Iron Mountain on the river front east of First street near Arsenal, and it is from this line at about Second street that the extensive yards are projected into the keg department between Second and Broadway. Subsequently a line was built from the bottling department at Thirteenth and Dorcas east along Dorcas street to First, thence one square south to the connection previously made near First and Arsenal between the Iron Mountain and the Pestalozzi street line. Prior to 1908 these two were the only connections which the railway had with any carrier in St. Louis. In that year it constructed a viaduct from First and Pestalozzi streets east along Pestalozzi toward the river, over the intervening tracks of the Iron Mountain on the river bank, which after clearing those tracks curves

north to a parallel with them and gradually descends to their level. The Dorcas and Pestalozzi street lines are connected by a crossover from Lynch and Dorcas to Second and Pestalozzi, the lines so merged continuing east on Pestalozzi over the viaduct to points of interchange some distance beyond the foot of the viaduct with the St. Louis Transfer Railway, whose tracks parallel those of the Iron Mountain nearer the river and the connection with which was the purpose for which the viaduct was built. East and south of this viaduct are extensive classification yards of the railway. The St. Louis Transfer Railway connects with the Wiggins Ferry Company a short distance north of this point of interchange, and the Wiggins Ferry Company delivers to the East St. Louis Connecting Railway on the other side of the river. The other two terminal carriers last named are owned or controlled by the Wiggins Ferry Company and the latter in turn is owned or controlled by certain of the trunk lines entering St. Louis. Practically all of the terminal and belt railways on each side of the river and the bridges or ferries connecting them are owned or controlled by the fourteen trunk lines entering St. Louis, through the medium of the Terminal Railroad Association of St. Louis, the stock of which they own in equal shares. Other lines not included within the fourteen which use these facilities on the same basis as do the proprietary lines under some mutual arrangement as to compensation are spoken of in the record as tenant lines. Therefore, although the Wiggins Ferry Company is not owned or controlled by the Terminal Railroad Association of St. Louis as a separate corporation, it is owned or controlled by certain of the proprietary or tenant lines embraced within that association and is in practical effect a part of its terminal facilities. The only individual trunk line which owns its separate terminals on each side of the river and the necessary connecting car ferry between them is the Iron Mountain, and these facilities of that carrier are in addition to its one-fourteenth interest in the terminal association, of which it is one of the proprietary lines. It will thus be seen that on traffic to and from the east the trunk lines entering St. Louis are dependent upon the facilities afforded either by the terminal association or by its proprietary or tenant lines, and that the railway is dependent upon one or the other of those facilities as an inlet and outlet to all of its traffic.

The two main stems of the railway along Dorcas and Pestalozzi streets described in addition to serving the brewery project some half a dozen side tracks to private industries, as well as a few public team tracks, and, as stated, shipments also are handled on the tracks within the partially inclosed yards of the bottling, Budweiser, and keg departments, for independent patrons of the railway as well as for the brewery. These two lines extend, as explained, east along the streets mentioned toward the river and

except for these few private sidings and public team tracks are essential to the operation of the brewery. But there is yet a third main track along Second street, crossing these two lines at right angles, which is not essential to the operation of the brewery but is given over practically wholly to the business of shippers who have no interest in either the railway or the brewery. On this Second street line south of Arsenal street, which is the southern boundary of the zone of brewery buildings, there is one private spur, and on that line north of Lynch street, the northern boundary of that zone, there are some 10 or 12 private sidings, team tracks, and yards combined. The Second street line has no point of direct connection with either the Dorcas or Pestalozzi street lines, it being necessary on inbound shipments, using them as illustrative, after clearing the viaduct on Pestalozzi street near First, to shunt them south to a point near Arsenal street east of First, thence back north along First, thence east on Dorcas, and finally north on Second street to a point north of Lynch.

The total length of the railway is about 25 miles, 2½ miles of which are represented by the three main stems described and the remainder by private spurs, team tracks, and yards, of which the trackage within the bottling, Budweiser, and keg departments and its extensive classification yards east of the viaduct on the river front constitute the greater part. About 9 miles are said by complainants to be really essential to the operation of the brewery. The railway has four engines but no cars of its own, the cars used on traffic which it originates being refrigerator cars furnished principally by the St. Louis Refrigerator Car Company, a substantial portion of the stock of which is owned by certain members of the Busch family. The railway does not handle less-than-carload freight and has no passenger business. Approximately 85 per cent of the total business within the zone of the brewery's buildings described is handled for the brewery, and, as stated, practically all of that by the Second street line for shippers having no connection with the brewery. Taking the railway as a whole about 76 per cent of the total business of 55,000 cars annually (based on the first eight months of 1912) is handled for the brewery.

From 1888 to 1908, during which time before the construction of its viaduct, referred to, its only points of interchange were with the Iron Mountain, the railway was operated by the Iron Mountain under a lease of its tracks under which it received from the Iron Mountain or other trunk lines from \$3.50 to \$5.50 per car on all of its shipments received from or delivered to them, including the shipments of the brewery as well as of the independent shippers on its rails. Upon the expiration of the second of these 10-year leases in the latter year,



the railway refused to renew the lease agreement, and shortly thereafter proceeded to operate the property itself, the reason assigned by it for this action being the allegedly poor service of the Iron Mountain. It appears, however, that there was a second and important, if not the controlling, consideration which entered into that decision, and that was the plan conceived by the younger Mr. Busch, one of its principal stockholders, to extend the line of the railway in St. Louis, to construct a new terminal line 7 miles in length in East St. Louis, and to connect the two by means of an additional bridge which was then in the contemplation of the municipal authorities. The trunk lines continued to make these absorptions to the railway until in the latter part of the year 1909, when, following the announcement through the press of St. Louis of the definite plan with respect to the extension of the railway system, they gave notice of their intention to cancel all allowances, not only to the railway, but to the 12 industrial lines referred to, and all these allowances were accordingly canceled, effective March 1, 1910, as explained. Following the partial decision of the Commission in this case most of the trunk lines have reinstated the allowances to the railway, and at least one of the other 12 lines referred to whose allowances were also canceled, and those allowances are being paid to-day. Defendants, however, are asking that we review the case as if the allowances had not been restored to the railway and we shall proceed with this report upon that assumed basis.

Apparently the theory upon which this complaint is brought is that the cancellation of these allowances to the railway was in effect the cancellation of joint rates between the trunk lines and the railway, the effect of which, as alleged in the petition, results "to the great loss and damage of said complainants and others similarly situated, and that such action constitutes an unjust and unlawful discrimination as between the industries and shippers located upon, along, or near the lines of railroad of said Manufacturers Railway Company and other industries and shippers in said city of St. Louis, state of Missouri, and subjects complainants and all other industries, persons, companies, firms, and corporations shipping or desiring to ship goods or merchandise over the lines of said Manufacturers Railway Company and thence over said other lines," and also subjects the "locality in which the lines of railway of said Manufacturers Railway Company are located and the particular description of traffic so shipped over the lines of said Manufacturers Railway Company, and thence over said other lines of railway, to undue and unreasonable prejudices and disadvantages, and gives undue and unreasonable preferences and advantages to other industries, persons, companies, firms, corporations, and localities and to the particular description of traffic shipped by such other industries, persons, companies,

firms, and corporations and to such other localities contrary to and in violation of the terms and provisions of section 3 of said act to regulate commerce." The prayer of the petition is that "an order be made commanding the defendants and each of them to establish, or reestablish, through routes and through or joint rates over their lines and the lines of the complainant, Manufacturers Railway Company, as the same existed prior to the first day of March, 1910, and to cease and desist from longer refusing to establish or reestablish said through routes and said through or joint rates, and that it be determined herein what shall be the proper and reasonable division of said through or joint rates for the transportation of such goods and merchandise over the lines of the railroad of said complainant, Manufacturers Railway Company, and each of said defendants, and that the defendants be ordered and required to establish or reestablish and maintain for the period of two years from the date of the order herein the said through routes and through or joint rates as the same existed prior to said first day of March, 1910, and that due reparation be awarded to said complainants and each of them, and for such other and further order or relief as the Commission may deem necessary in the premises."

There is evidently much confusion in the minds of complainants as to the true character of these allowances and the services for which rendered. Sometimes, for competitive or other reasons, a trunk line will absorb the charge of a connecting terminal line for gathering freight originating on the latter to the rails of the trunk line. Manifestly such service of the terminal line is one performed for the trunk line and not for the shipper, and should be paid for by the trunk line and not by the shipper. While the trunk line may thus make such absorptions voluntarily, we have not had cited to us and are not ourselves familiar with any principle of law under which the Commission could compel the trunk line thus to bear not only the expense of the service of a connecting terminal line but the reasonable profit in addition which presumably will be included in the terminal carrier's rate. We are speaking now of a terminal line which is in all respects a carrier subject to the act.

Similarly, allowances are frequently made by the trunk line to an industry under section 15 of the act for services rendered by an industrial line owned by it or its stockholders, as for an instrumentality furnished by the shipper, the only concern of the Commission in such case being to satisfy itself that the allowances are not above the reasonable cost of the service and therefore are not indirectly a rebate of a part of the trunk line's charge to the owning industry through the medium of the latter's industrial railway. These allowances also are voluntarily made as for services performed by the

shipper for the trunk line and it is not settled law that we can require them to be made by the trunk line any more than we can require the latter to absorb the published rate of the terminal carrier subject to the act, referred to.

Frequently the industrial line develops new traffic, and shippers other than the owning industry locate on its rails, whereupon the owning industry or its stockholders separately incorporate the railway, which thereupon files tariffs with the Commission, claims thenceforth to be wholly separate and distinct from the owning industry, and thereafter holds itself out to serve the owning industry and its other shippers impartially. Assuming the newly made carrier to be under the law a common carrier in all respects such as it represents itself to be, it is evident that allowances under section 15 of the act can no longer be made to the owning industry as for services rendered by the shipper, as the railway is no longer a part of or in law connected with the latter which is "the owner of property transported," to whom alone, under that section of the statute, allowances may be made, but is in the contemplation of the act in the same position as it would be if it had been constructed and was being operated by parties having no interest whatever in the owning industry. Conversely the owning industry would be on the same plane as if it had located as an independent shipper upon the newly made railway after the latter's construction by parties having no connection with the industry. The railway is now a public agency which, if it lives up to the obligations attached by the act to its own representations, should collect its charges from the former owning industry the same as it does from other shippers on its line. On local shipments this complete separation of carrier from shipper usually is not only maintained with respect to the owning industry as well as the independent shipper, but what is more pertinent to the specific point we are coming to is that, there being no third party in the form of a connecting trunk line involved in the transaction, both the owning industry and the independent shipper must recognize this local service as being performed for them as shippers for which they are expected to pay and that it is to them that the carrier must look for its rate. If, therefore, this service is recognized as being performed for them on local shipments, by what process of reasoning can it be transformed into one performed for the trunk line when rendered as a part of a through haul for the same shipper? Yet this in effect must necessarily be the contention of such a complainant railway and its shippers when the trunk line, owing perhaps to the absence of the same competitive conditions as existed with reference to the terminal line or the industry with its industrial line, referred to, or for other reasons, is not disposed to ask the complainant rail-

way to render it that service and to absorb the latter's charge therefor, and they petition this Commission for the establishment of joint rates which shall not exceed the rate of the trunk line. Such a course can not and should not be required by this Commission. In the contemplation of the act what the Commission in such a case is really asked to do is not to make the trunk line absorb the other's charge but is instead to take the two separate local rates of the two separate carriers for the two separate services, both rendered for the shipper, and to combine them into one rate commensurate with the value of the through service which in its entirety and in its constituent parts also is rendered for the shipper. We are not to be understood as saying that when carriers in the through route under their tariffs absorb the switching charge of a terminal line, the resulting rates are not to all intents and purposes, and in fact, joint rates so far as concerns the shipping public. What we do say is that while the trunk lines may thus voluntarily establish such rates on that basis, we would not be justified in requiring them to do so.

There is, therefore, we think, in legal effect a well-defined distinction between an absorption which may be made by a trunk line voluntarily and the division of the joint rate which may by lawful order be prescribed by this Commission. This being so, it follows that there is also in legal contemplation a well defined distinction between the character of the services rendered by the railway under the absorption tariffs of the trunk lines formerly in effect and the same services under the joint rate which could by lawful order be prescribed by this Commission. In the absence of an undue discrimination with respect to such absorptions the Commission could make no lawful order that they be made, and its order even in case of such discrimination would probably be in the alternative to absorb the charge of the railway or to cease absorbing similar terminal charges under like conditions. If there is shown no such discrimination, the only question left for the Commission to consider is the establishment of a joint rate between the railway and the trunk lines, and assuming the rate of the latter to be reasonable in itself such joint rate must necessarily be higher than that rate by the amount of the through charge accruing to the railway. Therefore, in the final analysis there are before the Commission in this case the two questions, (1) whether there is an undue discrimination against the shippers on the railway by reason of the absorption by the trunk lines of the charges of other terminal carriers in St. Louis under like conditions, and (2) if there is no such discrimination, should the Commission establish joint rates, and, if so, upon what basis?

The allegation of undue discrimination is based primarily upon the practice of the trunk lines of absorbing the charge of \$3 per car

assessed by the Terminal Railroad Association against them for passing over its terminals and of their absorbing each other's switching charges under the reciprocal arrangements existing between them as members of that association. It was to enable them to enter St. Louis and to furnish these reciprocal advantages and to afford a uniform rate to all shippers upon their lines in St. Louis that the trunk lines formed the terminal association, and the relative advantages afforded by these facilities and the relative necessity to the trunk lines of acquiring them should, we think, be given due consideration in the determination of whether the trunk lines unduly discriminate against shippers on the railway in refusing to absorb its charge while contemporaneously absorbing the charge of the former. Delivery of freight is made at the St. Louis rate on the rails of the St. Louis Transfer Railway, which as stated is owned by certain of the proprietary lines of the terminal association through the Wiggins Ferry Company, and on the rails of the Iron Mountain, one of the proprietary lines of the terminal association, within two or three blocks of the whole length of the Second street line of the railway, and in addition the rails of the Iron Mountain extend west to and across the northern end of the Second street line of the railway and in a few instances serve even the same industries by direct spur tracks. In addition to these deliveries in this section of St. Louis on what are in fact their own rails, with attendant reciprocal advantages to them, the trunk lines are sought to be required by this Commission's order to go a step further and bear the expense of the delivery on the rails of a separate and independent terminal connection which is not in position to render such reciprocal services and which, by its own statement, is endeavoring to construct an extensive terminal system to rival the trunk lines' own facilities as represented in the terminal association. That the railway is the only terminal line in St. Louis doing a terminal business exclusively and that it in that respect differs from the lines embraced within the terminal association is conceded by its president in his testimony in support of complainants' contentions as to the reasonableness of the amount of the allowances demanded by them:

I consider this \$4.50 per car more defensible than a scaled rate for terminal switching, because it is less open to criticism. The difference in the element of loss on account of high-class freight and low-class freight in terminal switching is very small. We can afford to handle a car of pianos about as cheaply as we can afford to handle a carload of coal. Primarily, service rendered by the Manufacturers Railway is a switching and terminal carload service. The Manufacturers Railway Company is the only terminal company doing an exclusive terminal and switching service in St. Louis. If you consider all of the constituent lines of the Terminal Railway Association as one company, then it and all other lines have either a cross-river haul or road haul in connection with what switching service they may render and, in addition to that, some passenger service, so that when you try to measure the reasonableness of

our rates with the rates of other carriers in St. Louis the parallel is not an exact one, for the reason that our entire revenue is derived from a switching service and these other lines supplement their revenue with other service and parallel comparison can not be made. They have rates in effect that are not remunerative in and of themselves. So has the Manufacturers Railway. It is necessary sometimes to use certain of your property at a loss in order to encourage the growth of the business. In some cases you are forced to do so on account of competition. In other cases you are forced to do so because your rates are fixed by ordinance. Our object is to have our entire schedule return a profit.

In this connection it may be argued by complainant that the terminal association is a separate corporation from the trunk lines. This is true. But it is also true that intermingled with the lines controlled by it as a separate corporation are included in the same reciprocal arrangement certain terminal lines owned or controlled by its proprietary or tenant lines direct, as is the Wiggins Ferry Company, as well as the various terminal properties of the individual trunk lines themselves, all of which together constitute the united terminals of all the trunk lines entering the city. There is therefore here presented a different situation from that which would be presented if we had under consideration two or more independent terminal systems in St. Louis, and the trunk lines absorbing the charge of one or some of them and refusing contemporaneously to absorb the charge of the others under like conditions, for, as previously stated in the report, simultaneously with the cancellation by the trunk lines of the allowances to the railway they also canceled similar allowances to twelve other independent terminal lines, industrial or otherwise, with which they claim the railway should be included.

We have carefully considered the evidence as presented by the combined record and, considering all the facts, circumstances, and conditions as now appearing, it is our conclusion, and we so find, that the railway is a common carrier subject to the act, as held in the previous report; that the payments formerly made out of their through rates by the trunk lines to the railway were absorptions in compensation for services rendered to the trunk lines and were in no sense divisions of joint rates as for services rendered for the ships served by the railway, as they would be considered to be under joint rates prescribed by order of this Commission; that in the absence of an undue discrimination with respect to these absorptions the Commission could make no lawful order with reference thereto; that the defendant trunk lines in delivering freight at the St. Louis rate to points on the rails of the Terminal Railroad Association of St. Louis and in refusing to bear the expense of similar delivery by the railway upon the rails of that carrier are not subjecting the shippers located on and served by the railway to undue prejudice and disadvantage; that therefore the only lawful order the Commission can make is in the establishment of joint rates if the conditions are such

as to warrant that action; that under joint rates so prescribed that part of the service performed by the railway would be in the contemplation of the act a service performed for the shipper to be paid for by the shipper and could not be construed by the Commission to be a service rendered for the trunk lines, the expense of which could be required by the Commission's order to be borne by the trunk lines; that the rates of the trunk lines not being shown to be unreasonable in themselves, such joint rates with the railway must therefore necessarily be in excess of the rates of the trunk lines to St. Louis by the amount of that part of the through charge accruing to the railway; and that joint through rates should be established on that basis.

We understand there has never been any question of through routes in this case even during the interim in which these allowances were not paid. Therefore the only remaining question is as to the amount to be added to the rate of the trunk lines in making the joint rates. The present allowances are, as stated, from \$3.50 to \$5.50 per car. Complainants now ask for a uniform allowance of \$4.50 per car, which is said on the average to be lower. The rate of the railway for local shipments between any points on its line is \$2 per car, fixed as a maximum by city ordinance; for intraplant movements which can be availed of only by the brewery as the only industry having need for such services, \$1 per car; and for weighing movements, 25 cents per car. The railway has a contract with the St. Louis Southwestern Railway under which it handles shipments for the latter under certain exemptions from liability for damage for \$1 per car, and it has offered the same contract to certain other carriers.

A considerable volume of testimony has been submitted on this phase of the case, including a comprehensive analysis of the physical assets and accounts of complainant railway. This part of the record has been given careful consideration, from which we are of the opinion that the division of the joint rates accruing to the railway should not exceed \$2 per car. However, we shall not by definite finding and order fix these divisions now. This is our original finding with respect to the establishment of joint rates, and the carriers, in accordance with the provisions of the act, will be given an opportunity to agree among themselves. If they can not agree upon this basis the Commission will make such further investigation as may be necessary to make a definite finding and order in this respect. It will be understood that in the establishment of joint rates under these findings no part of the division thereof accruing to the railway will be borne by the trunk lines. Its part of the rate will be paid by the shipper, including the brewery on the same plane as the independent shipper, and will be in addition to the

trunk lines' rates to St. Louis. The latter will retain their full rates to St. Louis.

Once give effect to the foregoing distinction between absorptions and divisions and establish and maintain joint rates on that basis and it becomes immaterial whether the stock of the railway and that of the brewery are in common or independent ownership, as then there can be no suggestion of possible rebate to the brewery through the railway, inasmuch as the railway's part of the through transportation, being performed not for the trunk line but for the shipper, will be paid for not by the trunk line but by the brewery as a shipper. Then also, and in accordance with complainant's own contentions, there need be and can be no distinction between the brewery and the other shippers on the line of the railway, because, the brewery being, as claimed both by itself and by the railway, wholly independent of the railway, it will be lumped together with the other shippers, all of whom will not only pay indiscriminately the local rate of the railway, as they do now, but will also pay indiscriminately the division accruing to the railway out of the through rate because it, as well as the latter's local rate, is payment for services rendered by the railway for them as shippers and not for the trunk line as a carrier.

Only in this respect of closer scrutiny and regulation of the divisions does the present case in any way differ from the case that would have been presented had the railway not been built by the brewery and the stock of both been subsequently placed in common ownership, as otherwise it would be immaterial what arrangements as to divisions could be made by it with the trunk lines. Complainant railway itself concedes that this question of the amount of the allowance to the railway, but not the question of whether a reasonable allowance should be made, is a matter for closer investigation owing to the common ownership of the stock of the railway and of the brewery, its statement in this respect, however, being based of course upon the understanding that the allowance was to come from the trunk lines. Therefore, regardless of its insistence that the railway and the brewery are separate and distinct in law and in fact, it nevertheless apparently recognizes still, to that extent, a certain relationship between the two and the necessity for the exercise of caution in payments by the trunk lines to the railway. That the separation, in fact, of the railway from the brewery seems even yet not to have been clearly effected in the minds of the complainant would seem to be further shown by the fact that the railway, as one of the complainants, is claiming reparation on the shipments that moved in the interim during which the allowances were not paid and is carrying the claim in its accounts. Upon what theory it as a common carrier can at the same time be a shipper or as a common carrier can claim reparation from another common carrier we are not advised. Neither are



we definitely advised whether the brewing association as a shipper and the independent shippers on its line intend to make similar claims. It is manifest that any claim for reparation must come from the shipper who pays the rate and that the order must run against each carrier in the route, one of which is the railway. We can conceive of no circumstances under which this Commission could award reparation against the trunk lines to the Manufacturers Railway as a common carrier. Even in case of joint rates a failure by the trunk lines to abide by a subsequent order of the Commission fixing divisions would be punishable by proceedings for penalties and forfeitures imposed by the act for disobedience of the Commission's orders and would not afford the basis for a claim by the railway for reparation, an award of which under the act is due only from a carrier to a shipper and not to one carrier, as a carrier, from another.

This same apparent recognition by complainants of a present relationship between the railway and the brewery is still further evidenced by the allegation in the petition that the said "complainants further allege that the said Manufacturers Railway Company as to material purchased by it and which is transported to said city of St. Louis over the lines of any of said defendants, and as to the goods and merchandise transported for any or all industries, persons, companies, firms, or corporations located upon or along the lines of said Manufacturers Railway Company over its said lines and over the lines of any of said defendants, renders a service connected with such transportation and furnishes instrumentalities used therein, for which service and instrumentalities so rendered or furnished the said Manufacturers Railway Company is entitled to a just and reasonable charge and allowance to be paid by the said defendant or defendants for which the service is rendered or said instrumentality furnished, as provided in section 15 of said act to regulate commerce." Allowances under this section of the act can be made only to the "owner of property transported," which in this case, by the railway's own contentions, is either the brewery or the independent shippers located on the railway. However, in spite of these inconsistencies and the apparent lack of certainty in its own contentions, we are convinced, as stated, that the railway is a common carrier under the act and should be regulated as such.

We should not confuse the nature of this proceeding. This is not a case in which there is a blanket rate over a wide territory, such as in the lumber tap-line cases, and in which the trunk lines are willing to make absorptions or divisions out of their own rates and the only duty of the Commission is to see to it that such payments by the trunk lines are not overdone and in effect rebates to the industry through the railway. Neither is it a case as presented by this record in which

trunk lines' rates to St. Louis. The latter will retain their full rates to St. Louis.

Once give effect to the foregoing distinction between absorptions and divisions and establish and maintain joint rates on that basis and it becomes immaterial whether the stock of the railway and that of the brewery are in common or independent ownership, as then there can be no suggestion of possible rebate to the brewery through the railway, inasmuch as the railway's part of the through transportation, being performed not for the trunk line but for the shipper, will be paid for not by the trunk line but by the brewery as a shipper. Then also, and in accordance with complainant's own contentions, there need be and can be no distinction between the brewery and the other shippers on the line of the railway, because, the brewery being, as claimed both by itself and by the railway, wholly independent of the railway, it will be lumped together with the other shippers, all of whom will not only pay indiscriminately the local rate of the railway, as they do now, but will also pay indiscriminately the division accruing to the railway out of the through rate because it, as well as the latter's local rate, is payment for services rendered by the railway for them as shippers and not for the trunk line as a carrier.

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such a change, except to the extent that the quality or grade of the new service might be worse than that of the service now rendered by the Manufacturers Railway.

So, it is apparent that it is not any danger or fear of financial loss that prompts Mr. Busch to engage in this expensive and protracted litigation with the defendant carriers, but it is his desire that the shipping public of South St. Louis, and his own industries among them, may have and retain the undoubted benefits which they have ratably shared in common through the extensions and operations of the Manufacturers Railway Company.

It is equally unnecessary and inappropriate to discuss the question whether the Terminal Railroad Association of St. Louis is a monopoly in violation of the Sherman antitrust law, as the determination of that question is quite apart from this proceeding and is not controlling of the issues before this Commission.

We have found that there is no undue discrimination against shippers located on or served by the railway chargeable to the trunk lines by reason of their cancellation of these allowances, and that in the absence of such undue discrimination the Commission can make no order in reference thereto, and therefore that the only order that can be made by the Commission is in the establishment of joint rates between the railway and the trunk line carriers. In the latter connection we may remark that the length of a carrier's rails does not change the principle underlying the establishment of such rates. Under these circumstances the true character of the case now before the Commission and of the principle underlying it with respect to the establishment of joint rates by our order will be apparent if, for illustration, we substitute for the railway a common carrier from St. Louis to a point, say, 25 miles beyond that city, and to-morrow locate its industries, all of which are in ownership wholly independent of the railway; or if, in similar illustration, we assume the construction to-day of the railway anew, with its present 2½ miles of main track and its 22½ miles of branches and sidings, and to-morrow locate its present industries, all of which, including the brewery, are in ownership wholly independent of the railway. The latter in the contemplation of the fifteenth section of the act is the situation presented by complainants in this case.

As heretofore shown the prayer of the petition is for the establishment or reestablishment of "through routes and through or joint rates as the same existed prior to March 1, 1910," which means the establishment or reestablishment of the St. Louis rate with the previous absorptions. It is apparent from the foregoing findings that the prayer of the petition can not be upheld to that extent.

In view of the nature of this case it has seemed to be necessary and proper under the pleadings clearly to define by express findings not only the legal rights, but as well the legal duties, of all parties of record, including the railway as a common carrier. One of the duties

of the latter is that it participate with the trunk lines in joint rates, and we have indicated what, in our opinion, is the proper basis of such rates. We assume, owing to its desire to keep open the through routes heretofore in existence, that as to it no order in establishment of joint rates will be necessary. We also have no doubt that the trunk lines, in view of our findings with respect to the basis on which they may be required to participate therein, will likewise voluntarily establish and maintain these joint rates. We shall therefore enter no order at this time, but shall hold the case open for 60 days from the date of service of this report, within which period we shall expect the trunk lines and the railway to establish joint rates in accordance with these findings. If this is not done we shall proceed to the making of a definite order in that respect.

We have, in other words, dealt with this case as presented by the pleadings and at the hearings, upon the understanding that the trunk lines are resisting the demands of the railway and its shippers and in accordance with what we conceive to be our duty and limitations in the making of joint rates by affirmative order. That order, if made, would merely prescribe the maximum rate. Should one or more of the trunk lines attempt to pay to the railway the \$2 per car which we suggest herein as being in our opinion reasonable for the latter's shippers to pay for its service, another question would be presented in which would figure the fact, much discussed in the record, of the common ownership of the stock of the railway and of the brewery. That question would not arise primarily under section 15 of the act, but under those sections which seek to prohibit the giving of unlawful concessions by any device whatsoever.

It follows from what we have said herein that we regard the present allowances which, as stated, average slightly above \$4.50 per car, as effecting unlawful results. We should also regard in the same light any effort on the part of the trunk lines to accomplish these results by shrinkage of their St. Louis rates or by means of per diem or demurrage agreements or practices, or otherwise.

HARLAN, *Commissioner*, concurring:

The immediate result of the findings and report of the Commission in this case will be to put an end to the unlawful concessions out of the rates that have been made to the Anheuser-Busch Brewing Association for several years by the carriers serving St. Louis. To that extent I fully approve the action of the Commission. I also concur in much that is said in the report of the Commission. I concur particularly in the very important principle to be gathered from the report, namely, that the incorporation by an industry of a railroad company to operate its plant tracks and locomotives does not, as a matter of right, entitle the incorporated company to

divisions out of the rates of the trunk line carriers, and does not, as a matter of right, give the carriers a legal basis for relieving the industry, in whole or in part, of the cost of operating that part of its plant facilities by assuming the burden themselves and paying for it out of their rates. As I understand the report of the Commission, it holds on the facts shown of record that the extension of the St. Louis rates to and from all points within the plant of the brewing association is unlawful, and that the divisions or allowances so paid to its industrial railroad out of the rates are as unlawful as they would be if paid by the carriers directly to the association. In other words, the Commission, looking through the merely technical legal structure by which the practice has been enveloped and surrounded, finds that unlawful concessions grow out of this rate arrangement of the carriers with the brewing association and its industrial railroad. The Commission, therefore, by its report and findings has stopped the St. Louis rates at the point of interchange between the carriers and the industrial road, and holds that any service by the Manufacturers' Railway for the association beyond that point must be regarded as an additional service for the association for which it must pay, and not as a service for the trunk lines for which they must or lawfully may pay out of their rates.

There is thus brought to an end an unlawful practice that has continued through several years and an unlawful preference to a large and favored shipper that has been enjoyed by it in violation of law. The situation is now restored to a lawful and nondiscriminatory basis. So far therefore as the result in the particular case is concerned, it is unnecessary to add anything to what is said on the report of the Commission; the report cuts off the tail of the animal just behind the ears, and in the presence of an operation so complete the form of the instrument used is ordinarily not a matter of any consequence. Nevertheless, in view of the importance of the question and its application to a multitude of similar cases, I venture in this way, and as briefly as possible, to state my own views with respect to certain phases of the problem as they are illustrated on the record before us.

Starting in a relatively small way, the business conducted under the name of the Anheuser-Busch Brewing Association has grown to very large proportions. Its grain houses, malt houses, warehouses, brewing houses, rice houses, bottling works, repair shops, stables, etc., that make up the brewery plant, cover 35 or 40 city blocks. A more accurate impression of the extent of the industry may be had from the statement that it embraces 126 acres of ground, all closely covered with structures of one kind or another, in which the various processes in the manufacture and marketing of beer and related

products are carried on. Some of these structures are individually as large as many factories.

For a number of years following the inception of the enterprise the inbound raw materials and the outbound products of the brewery were drawn by horse and wagon to and from the tracks of the Iron Mountain at a point on the river front near First street. But the plant is situated on the hills of South St. Louis and the grade of the streets is such as to make it difficult and expensive to drag traffic in large volume to and from the rails of the carriers. With the growth of the industry the use and maintenance of the horses and wagons therefore became a large item in the manufacturing cost, and, as in the case of many large industries elsewhere, it was found essential in 1885 to abandon that means of doing the work and to substitute a plant railway in order more economically to move the increasing tonnage of the plant to and from the tracks of the carriers. The record makes it perfectly clear that this substitution of one form for another of doing the same thing was brought about in the interest of the industry and not in any degree in the interest of the shipping public; it is practically conceded on the record that substantially all the tracks except the one in Second street were laid for the brewery and for it alone.

The rails that were installed by the industry to take the place of the horses and wagons run into and between the various buildings and through the narrow passageways that separate them, as is clearly described on the report of the Commission. In some cases they are inclosed between the walls of these buildings and in other cases by fences or walls surrounding open places adjacent to the buildings. Rails and locomotives have become a part of the ordinary plant equipment of large manufacturing concerns, and so large an enterprise as the one here before us could not be conducted economically without these modern aids and appliances. The necessity of giving up the effort to move the inbound and outbound traffic of the brewery in the old way will at once be appreciated when it is stated that its tonnage aggregates annually one-thirtieth of the entire traffic of the city of St. Louis. A still clearer conception of the saving effected by the substitution of motive power and rails for horses and trucks, and of the impossibility, physically and economically, of continuing to do the work with horses and trucks may be gathered from the statement of record that some 40,000 loaded cars, or about 130 cars for each working day, were thus handled by the brewing association within its plant during the year preceding the original hearing. In addition there were about 35 interworks-switching movements each day, or some 10,000 for that year. These figures are based on the brewing

association's own classification of the traffic of that year; the additional testimony taken since that time shows that its traffic and interworks switching have substantially increased.

With the growth of the industry the number and length of the tracks have been increased, and at this time the rails spread out like a fan through the entire plant from one general main connection with the Iron Mountain. But of the 25 miles of track now claimed by the industrial railroad all but 2½ miles lie within what would be the plant inclosure of the brewing company if it were surrounded by a fence, as is the case with many such manufacturing operations. The property is intersected, however, by streets which can not be fenced off. The whole plant is compactly built, the various buildings being so constructed and located in their relation to one another as to result in the highest type of plant efficiency, and so placed as to give the effect of a plant inclosure.

The tracks within the plant can not from any point of view be said to form any real part of the public transportation facilities of the city of St. Louis. Practically all of them are used exclusively for the brewery, and there is no pretense that any substantial use is or could reasonably be made of them by the general public. Moreover, the public is not encouraged to use these tracks and is not expected to use them. It is said that the industrial railroad has four team tracks in the yards adjoining the brewery's bottling department; but these yards, as stated in the report of the Commission, are inclosed on one side by an iron fence carrying "No Thoroughfare" signs, and the tracks are at the edge of an embankment supported by a concrete wall built up from the street, the latter being about 12 feet below the level of the tracks. The record shows that the public makes no real use of these tracks, and their relation to the industry would still remain that of a plant facility even if substantial use were made of them by the public.

There are numerous other features in the situation that develop and emphasize the purely industrial character of this alleged railway and show that its incorporation was a mere device for securing unlawful allowances from the trunk lines. Some of these matters may be mentioned. For example, a large part of the tracks of the so-called railroad company are not owned by it at all, but are leased to it by the brewing association. The original lease provided that the tracks were to be available to the general public only when such use of them did not interfere with the business of the brewery, and of this the brewery was to be the sole judge. After that clause had come under observation at the original hearing it was immediately eliminated by an amendment of the lease. This prompt readjustment of the paper relations between the two companies indi-

cates an alert appreciation of the importance of agreements and forms of organization that have the appearance of being legally correct. The incident serves also to illustrate the identity of interest between the brewery and its industrial railroad, and how the policy of one is necessarily the policy of the other, and how completely the policies of both companies rest in one control. While that weak spot in the lease and in the duty of this alleged common carrier to the public has been corrected on paper, it would be mere folly to infer that the brewing association does not in practice still retain a preferred use of the tracks which it built for its own purposes.

Again, I have said that of the 25 miles of track which the Manufacturers' Railway claims to operate all but  $2\frac{1}{2}$  miles are within the plant inclosure. As a matter of fact, 4 or 5 miles of the trackage thus assigned to the plant make up what is called a storage or classification yard; this is of recent creation and is located between the river and the Iron Mountain rails. It is reached from the plant over a viaduct spanning the Iron Mountain tracks. It is true, as insisted of record, that this addition to the plant tracks was secured only as the result of a substantial expenditure of funds. It has been a valuable investment, however, to the association; and the investment was shrewdly made, for by this means the industry acquired a connection with all the lines serving St. Louis and was no longer dependent upon the Iron Mountain only. This outlet to the other lines is a mighty club in the hands of the brewing association and has already been used to beat the trunk lines into submission to its will. But this is not the only advantage accruing to the industry from the storage yard. The record shows that being the "home track" of the St. Louis Refrigerator Car Company, a Busch subsidiary concern, it enables the brewing association to escape demurrage charges that it might otherwise have to pay. This, however, is not of great importance, because demurrage so paid would be simply a transfer from one pocket to another of the controlling interest.

But there is another and a still more important demurrage feature in such cases that must be mentioned in order that we may have a full understanding of the very great advantage flowing to an industry when it has succeeded in compelling the trunk lines to deal with its plant railway as if it were a common carrier. Shippers pay demurrage, ordinarily \$1 per day, to the carrier on the rails of which they detain a car beyond the lawfully established period for loading or unloading. With large industries the annual charges for demurrage often make a very considerable item in their transportation costs. But when these charges are paid directly into the treasury of their own incorporated railway company demurrage ceases to be a burden on their traffic and becomes a mere paper account.



This, however, is not all. According to a well-established practice, switching roads have a certain free period, during which they may keep the cars of the line carriers on their rails without paying the usual per diem allowance; and as a reward for the expeditious handling of the equipment a switching road, returning a car in shorter time, receives a bonus from the line carrier of 45 cents a day. To use language familiar to the railroad world the switching road under such circumstances is entitled to a per diem "reclaim." In other words, to apply the practice to the case before us, the Manufacturers' Railway, besides enabling the brewing association to avoid demurrage charges amounting to many thousands of dollars a year, actually earns for the industry, out of the revenues of the carriers, many thousands of dollars a year through per diem reclaims. All this is in addition to the huge sum it annually receives through switching allowances out of the revenues of the carriers, as herein explained.

As already indicated, substantially no use is made of the tracks within the plant inclosure except by the brewing association. About 55,000 loaded cars are handled annually by the industrial line; but so small is the outside traffic over these tracks compared with the immense traffic of the brewery that it may be considered as practically negligible. A careful analysis of what appears of record and in our own files shows that from July 1, 1909, to November 30, 1911, not less than 85.06 per cent of the total traffic was for the account of the Anheuser-Busch Brewing Association; 3.16 per cent consisted of shipments to and from industries affiliated with the Busch interests; and of the remaining 11.78 per cent of the total carload movement 4.68 per cent was for outside industries located on lands owned by the brewing interests. This left but 7.10 per cent of the total traffic that was wholly outside and beyond the control or direct influence of the brewing interests. The spirit that has characterized the course of the brewing interests in making up this record is illustrated by the fact that much of the traffic shown on their exhibits as outside traffic developed, upon further investigation, to be traffic that was billed either to the brewing association, its employees, or affiliated industries, or billed to outsiders by other companies under the control or direct influence of the Busch interests in one form or another. The small amount of tonnage that may be said to be outside traffic in a complete sense was billed to or from industries in Second street, many of which are reached by Iron Mountain spur tracks, but used the Manufacturers' Railway for reasons not developed on the record but which without undue strain may readily be inferred.

Attention has been drawn to the fact that, as a matter of manufacturing economy and as a plant necessity, rails and a locomotive

were substituted for the horses and wagons that had previously been used for moving materials and products within the works and to and from the rails of the carriers. It is important that the results of this course to the industry should be fully understood. The record does not show how much it had cost the brewing association in previous years to use horses and wagons; but presumably it was a large item. It must not be inferred, however, that the brewing association, having substituted plant rails for its horses and wagons, now bears the cost of doing the work in this new form. It incorporated a railroad company and called it a common carrier. Thereupon, using its immense traffic as an instrument of persuasion, the brewing association forced the carriers to assume the cost of doing the work. It demanded and compelled the carriers to make its industrial railroad a switching allowance of from \$3.50 to \$5.50 a car. At this time the allowance averages about \$4.50 a car. It amounts to from \$225,000 to \$520,000 a year. In other words, the labor and cost, which the ordinary shipper must bear, of getting his traffic to and from the rails of a common carrier, have in this manner been taken from the shoulders of the brewing association and laid upon the general public. The brewing association no longer bears the burden as it did when it used horses and wagons; by substituting rails and a plant locomotive and later turning them over to its incorporated railroad company and calling the latter a common carrier it has succeeded in relieving itself of the cost.

This relation between the trunk line carriers and the Anheuser-Busch Brewing Association is really nothing more or less than a shameless device to evade the law. The record makes it entirely clear, and on the report of the Commission it is expressly found, that practically all the tracks of the industrial railway company are essential to the operation of the brewery. The Manufacturers' Railway is therefore a common carrier for the brewing association only on paper and in form; in substance and in fact it is a plant facility, a necessary part of the plant equipment. No one knows this more fully than those in control of the brewing association. They laid these rails for the purposes of the brewery, and they incorporated the railroad company not in order to serve the public but simply as a basis for throwing upon the public the cost of doing the brewery's own work. The form of the device for accomplishing this was not, however, the invention of the brewing association. On the contrary, the Manufacturers' Railway is but one of a numerous company of industrial railroads that have been incorporated for the same purpose of forcing the carriers to relieve the controlling industry of this large item in the cost of manufacture and transferring the burden to the general shipping public. I state the case in that form because it must not be

This, however, is not all. switching roads have a keep the cars of the line usual per diem allowance handling of the equipment, time, receives a bonus use language familiar in such circumstances in words, to apply the shippers' Railway, but demurrage charges actually earns for many thousands of dollars is in addition to the allowances out of

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Attention!  
facturing economy

holding these views on this very important question, I can see in the results that must follow upon the findings and the Commission herein, for they will require the trunk line to withdraw the unlawful preferences now being enjoyed by the Anheuser-Busch Brewing Association. I differ with the Commission only in the status assigned by it to the Manufacturers' Railway as a common carrier. With respect to the brewing association, in my judgment, simply a plant facility and its service a mere device. I think also that we ought not to hesitate to define it as a plant facility. The fact that it is incorporated as a railroad is not controlling. That is a mere device to make a part of the necessary plant equipment a source of unlawful income to it, and we ought not to hesitate to call it a device and to deal with it accordingly. The law forbids preferences by means of any device or contrivance. That is the central and most vital feature in all this case, and to enforce this principle we must follow as far as the law goes those who are willing to evade the law in this way may not hesitate to denounce as a device any means, whatever it may be, by which unlawful results are accomplished. Construing the phrase "by any device whatever," it is said in *Armour Packing Co. v. United States*, 209 U. S., 56, 71, 72—

...looks to reach all means and methods by which the unlawful preference of concession, or discrimination is offered, granted, given, or received; \* \* \* includes anything which is a plan or contrivance.

As far as shippers will go in this way to evade the law I have endeavored to point out elsewhere, 21 I. C. C., 304, 318, and 319, and will not repeat it here. In the immediate neighborhood of the Anheuser-Busch Brewery is the brewery of the Lemp Brewing Company. Although relatively small when compared with the Busch brewery, it is nevertheless a large industry, its inbound and outbound traffic amounting to 10,000 to 12,000 carloads a year. This company also has abandoned the use of horses and wagons as a means of getting its beer up and down the hill on which both breweries are situated. It has solved the difficulty by using a drum and cable, operated by a stationary engine sufficiently powerful for pulling cars up and letting them safely down the hill to and from the tracks of the regular carriers. As a matter of fact it does this to some extent for some of its neighbors. This contrivance, a few hundred yards in length, is longer than is the elevator which hoists coal in cars from the mine; it can be dumped into the tipple; like the hoists the drums are simply a part of the plant equipment of the brewery; they take the place of the horses and wagons that others use; the contrivance has been incorporated as the Lemp Brewery and Company; and, when the carriers were forced

supposed that the carriers, when permitting their revenues to be depleted in this manner, bear the loss themselves. Like other items that affect their net income, these contributions to favored industries through their industrial roads must necessarily be made good in some form, and sooner or later the losses are taken up and absorbed in the higher rates imposed on the general public. It is no exaggeration to say that the revenues lost and dissipated by carriers, in this and other similar unlawful preferences of favored shippers, amount to many millions of dollars a year. And yet, while their revenues are being so thrown away in millions, the public is now being asked by the carriers to submit to higher rates in order that they may have additional revenues. It seems entirely appropriate at this time to express the conviction that the enormous depletion of the revenues of carriers in the unlawful form illustrated on the record before us has a necessary and, in my judgment, a very important bearing on the propriety of the additional rate burdens which the carriers are seeking to lay upon the general shipping public.

Throughout the country large enterprises have been compelled, for reasons of economy and efficiency, to abandon horses and wagons and to substitute rails and motive power for doing the same work. They are now incorporating so-called railroad companies and, on the pretense that their rails and locomotives form additional facilities for the general public, they are calling these plant railways common carriers. With a large traffic to move and route, these industries are forcing the trunk lines, through switching allowances or divisions out of the rates, to contribute to the cost of the operation of their plant railways. Having accomplished this they then commence to talk about "our railroad company," and to say that it is "not earning the cost of operation," and "ought to have higher divisions." They speak of it as a thing apart from the industry itself, when in every true sense it is but a mere plant facility, like the horses and wagons still used by smaller shippers. These so-called railroads file tariffs and go through the form of rendering annual reports and assert that they keep their accounts as required by our regulations. They demand and receive free passes, and their presidents and other officials go over the country in private cars without cost. All these unlawful privileges not only put the favored industries on a preferred-rate basis, but result in an enormous depletion of the revenues of the carriers which the general shipping public must make good. It remains for this Commission, in my judgment, to correct this growing evil before such special privileges become more firmly fixed than they now are as a definite burden upon the rates of the public and upon our transportation methods.

Entertaining these views on this very important question, I can readily concur in the results that must follow upon the findings and report of the Commission herein, for they will require the trunk line carriers at once to withdraw the unlawful preferences now being enjoyed by the Anheuser-Busch Brewing Association. I differ with the Commission only in the status assigned by it to the Manufacturers' Railway as a common carrier. With respect to the brewing association, it is, in my judgment, simply a plant facility and its service a private service. I think also that we ought not to hesitate to define it as a plant facility. The fact that it is incorporated as a railroad company is not controlling. That is a mere device to make a part of its necessary plant equipment a source of unlawful income to it, and we ought not to hesitate to call it a device and to deal with it accordingly. The law forbids preferences by means of any device whatever. That is the central and most vital feature in all this legislation, and to enforce this principle we must follow as far as the ingenuity of those who are willing to evade the law in this way may lead us, not hesitating to denounce as a device any means, whatever its form, by which unlawful results are accomplished. Construing the phrase "by any device whatever," it is said in *Armour Packing Co. v. United States*, 209 U. S., 56, 71, 72—

the act seeks to reach all means and methods by which the unlawful preference of rebate, concession, or discrimination is offered, granted, given, or received; \* \* \* the term includes anything which is a plan or contrivance.

How far shippers will go in this way to evade the law I have endeavored to point out elsewhere, 21 I. C. C., 304, 318, and 319, and will repeat here. In the immediate neighborhood of the Anheuser-Busch brewery is the brewery of the Lemp Brewing Company. Although relatively small when compared with the Busch brewery, it is nevertheless a large industry, its inbound and outbound traffic amounting to 10,000 to 12,000 carloads a year. This company also has abandoned the use of horses and wagons as a means of getting its traffic up and down the hill on which both breweries are situated. It has solved the difficulty by using a drum and cable, operated by a stationary engine sufficiently powerful for pulling cars up and letting them safely down the hill to and from the tracks of the regular carriers. As a matter of fact it does this to some extent for some of its neighbors. This contrivance, a few hundred yards in length, is no more a railroad than is the elevator which hoists coal in cars from a mine so that it can be dumped into the tipple; like the hoists the drum and cable are simply a part of the plant equipment of the Lemp brewery and take the place of the horses and wagons that others use. Nevertheless the contrivance has been incorporated as the Western Cable Railroad Company; and, when the carriers were forced

to make these concessions out of their rates to the Anheuser-Busch Brewing Association, they felt it necessary as a matter of mere justice and equity to make similar concessions out of their rates to the Lemp Brewing Company; the allowances to it, through its "Western Cable Railroad Company," range from \$1.50 to \$3.50 a car. It would seem that ingenuity, in evading the wholesome principles of the law and in securing special advantages at the hands of carriers, could go no further than a drum and cable, and yet were the time available still more ingenious devices could be detailed. The Manufacturers' Railway and the Western Cable Railroad are, however, sufficiently illustrative of the means by which large industries unlawfully relieve themselves of burdens which they alone ought to bear, but which, having a large traffic to bargain with, they succeed in putting upon the carriers and through them upon the general shipping public. The smaller shippers on this same hill, whose traffic is not so extensive, continue to carry it back and forth to the regular lines by horse and wagon. They get no allowance from the carriers for this; on the contrary they not only bear their own burdens but are compelled, with the rest of the shipping public, to share the cost to the carriers of the allowances made to their larger neighbors for doing the same work.

There remains one other thought in connection with this case which may be disposed of in a few words. The Manufacturers' Railway now has a track running through Second street which is not ordinarily used for the brewery. It was no part of the industrial railroad as originally planned, and before it could lawfully be laid an additional ordinance was necessary. It was necessary also to amend its charter. Possibly that track may fairly be regarded as an addition to the public rail facilities of that part of the city. It is only  $2\frac{1}{2}$  miles long. But after a most attentive study of the record I am unable to regard any part of the tracks, within what I have described as the plant, as being anything other than a part of the equipment of the plant. They form a system of rails for the plant such as was considered in *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C., 237; *Solvay Process Co. v. D. L. & W. R. R. Co.*, 14 I. C. C., 246, and other cases. A portion of these tracks may occasionally be used by an outsider. In that respect the situation is similar to the conditions shown in *Crane Iron Works v. P. & R. Ry. Co.*, 15 I. C. C., 248; and *Crane Iron Works v. C. R. R. Co. of N. J.*, 17 I. C. C., 514, affirmed in *Crane Iron Works v. United States*, 1 Com. Ct. Rep., 453. The Manufacturers' Railway has no stations and expressly refuses less-than-carload traffic. It has no desire to serve the public over the plant tracks that I have been endeavoring to describe, except as such service may aid in giving to those rails the appearance of having been intended to serve the

public. If this small and purely incidental and negligible service for others is sufficient to justify this great inroad upon the revenues of the carriers and the indirect tax that it casts upon the general shipping public, then all the plant railroads now being incorporated throughout the country by their respective proprietary industries, as a basis for having the trunk line carriers assume the cost of their operation through allowances, will be entitled to the same results, and the practice will become a fixed burden of enormous proportions on the transportation of the country to be borne by the general public through the general schedule of rates.

28 I. C. C.



No. 4876.  
CARNEGIE BOARD OF TRADE ET AL.  
v.  
PENNSYLVANIA COMPANY ET AL.

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*Submitted December 6, 1912. Decided June 19, 1913.*

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Special fares for the movement of passengers in guaranteed numbers in one day, without baggage-checking privileges, may be provided by carriers under the permission given in section 22 of the act to regulate commerce. In the absence of discrimination the Commission, however, has no power to prescribe such fares.

*N. B. Billingsley* and *W. B. Moore* for complainants.

*A. P. Burgwyn* and *L. E. Hinkle* for Pennsylvania Railroad Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; and Pennsylvania lines.

*E. P. Connell*, *W. W. Collin, jr.*, *O. E. Butterfield*, and *Clyde Brown* for Lake Shore & Michigan Southern Railway Company.

*B. A. Reed* for Bessemer & Lake Erie Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The petitioners here are the Carnegie Board of Trade of Carnegie, Pa., the Conneaut Lake Company, of Conneaut Lake, Pa., and the Rock Springs Company, of Chester, W. Va., corporations, and the Youngstown Sheet & Tube Company Relief Association, a voluntary association composed of individuals residing at Youngstown, Ohio.

The subject matter of the complaint is the withdrawal by the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company of certain fares for the transportation of passengers between Carnegie, Pa., and Chester, W. Va., and also the withdrawal by the Lake Shore & Michigan Southern Railway Company and the Bessemer & Lake Erie Railroad Company of certain fares for the transportation of passengers between Youngstown, Ohio, and Conneaut Lake, Pa. The latter carrier is a defendant with regard to the last-named fare, because the haul from Youngstown to Conneaut Lake is partly over its rails. It, however, is not resisting the demands of the petitioners and is not a respondent here in other than a formal sense.

While the fares withdrawn were "excursion fares," it fully appears that the service to which they have applied for many years has been a regular and constant part of the carriers' services from year to year. These fares covered in each case the movement of passengers in specified numbers, upon special trains, to and from picnic parks, the round trip being made in one day. Under these fares no baggage was checked and only ordinary passenger equipment was furnished, no occasion being presented for the use of sleeping cars or chair cars. A typical tariff containing such fares between Pittsburgh and Chester, W. Va., was fare sheet No. 4892 of the Pennsylvania lines west of Pittsburgh, I. C. C. No. 1843, filed with this Commission on April 16, 1908. This tariff was headed "One-day picnic excursions to Rock Springs Park," and read as follows:

*To ticket agents:*

Effective May 20, 1908, the sale of excursion tickets to East Liverpool, Ohio, and return, or to Chester, W. Va., and return, on account of Rock Springs Park, at fares and under conditions published herein for the above-named occasions is hereby authorized.

Dates of sale: Daily except Sundays until September 30, 1908, and daily except Sundays from May 1 to September 30 on each succeeding year. Agents will make no contracts until it has first been learned whether equipment can be provided and the park reserved on the dates chosen for excursions.

Conditions: Tickets will be nontransferable, and no baggage will be checked thereon.

Fares: See next page. No excursion will be run unless proper guarantee has been placed with agent.

Limits: Special trains in both directions on date of sale.

The reverse side of this tariff sheet showed fares from 82 points in Ohio, Pennsylvania, and West Virginia, to East Liverpool, Ohio, and Chester, W. Va., "account Rock Springs Park." The fares shown from Carnegie, Pa., to the above stations were: For Sunday schools and day schools, 55 cents per capita, a guarantee of 200 passengers being required; for societies, 80 cents per adult and 55 cents per child, upon a guaranty of 200; 75 cents per adult and 50 cents per child, upon a guaranty of 500; and 65 cents per adult and 35 cents per child, upon a guaranty of 1,000.

The attention of the Commission being directed to the above tariff, the carriers were notified on May 5, 1908, that it was regarded as unlawfully discriminatory and that provision should be made to charge the same fares per capita for all societies. The carrier protested against this ruling, but finally acceded to it with the result that the above tariff was canceled on June 22, 1908. In the course of the correspondence relative to this tariff, Mr. Samuel Moody, general passenger agent of the Pennsylvania lines west of Pittsburgh in a letter dated May 8, 1908, said:

The logical result of your ruling, however, will be to put the Sunday and day school fares on the same level with the society fares. The effect of that would  
28 I. C. C.

be that we would be obliged (1) to raise our Sunday and day school fares to the society basis, which we could not do and have any children to carry, because they have trouble in raising the subscriptions to pay for these fares as they now stand, and (2) we can not reduce the society fares to the Sunday and day school fares because we could not then afford to carry the people, as the Sunday and day school fares are now about at cost \* \* \*.

Thereafter, and until the end of the season of 1911, special tariffs were issued for each event for which reduced fares were made to Chester, schools and Sunday schools being generally given the same fares as had previously been charged to societies. This was not consistently so, however, the 55-cent fare being opened by special tariff to a number of church and Sunday-school excursions. This method of publishing fares was made possible by the application of Rule 52 of Tariff Circular No. 18-A of the Interstate Commerce Commission, reading as follows:

Fares for an excursion limited to a designated period of not more than three days may be established, without further notice, upon posting a tariff one day in advance in two public and conspicuous places in the waiting room of each station where tickets for such excursion are sold and mailing a copy thereof to the Commission.

By this method the fares for the special class of passenger transportation under discussion were published in such one-day tariffs instead of in such permanent tariffs as the one above quoted. The Commission has in its files some 150 of these one-day tariffs providing fares via the Pennsylvania lines from various points to Chester, W. Va., and return, in all substantial respects identical with the tariff above quoted. These tariffs indicate that the round-trip fare from Carnegie to Chester of 80 cents for adults and of 55 cents for children, good only on special trains in both directions on date of sale, not transferable, not entitled to stop-over, without privilege of checking baggage, and open only to those giving in advance a guaranty of the sale of a designated number of tickets, continued to be the established fare held out by the carrier to the world throughout the summer seasons of 1908, 1909, 1910, and 1911. Our files and the oral testimony herein also show that this established fare was made available by a special one-day tariff publication to every applicant therefor. This fare was so established for a number of years prior to 1908, as well as to and including the summer of 1911.

In the same manner an investigation of the tariff files of the Commission shows that the Lake Shore & Michigan Southern Railway and the Bessemer & Lake Erie Railroad jointly maintained for many years prior to 1912 schedules of fares in all of their elements similar to the above by which on such passenger traffic in guaranteed numbers from Youngstown, Ohio, to Conneaut Lake, Pa., a fare of 85 cents for adults and 50 cents for children was continuously available to

any persons desiring the same. These fares also were withdrawn early in 1912, leaving the one-day outing parties from Youngstown to pay the higher fare provided for ordinary passenger travel.

The above fares are typical of some hundreds of like fares which for more than 10 years prior to 1912 were maintained throughout central freight association territory by the various rail carriers operating therein. These fares were much less per passenger per mile than the regular fares upon regular trains with baggage-checking privileges, but, under the guaranty of full loading, paid to the carriers per car-mile and per train-mile much higher earnings than their average passenger-car and passenger-train earnings. Early in 1912, however, in considering the litigation that had arisen under the legislation of various states between the Alleghenies and the Mississippi River, the carriers determined upon a new policy. At a meeting of the central passenger association, of which the Lake Shore & Michigan Southern and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway companies were members, a resolution was passed providing that all such fares should be withdrawn, and that a uniform flat rate of 2 cents per mile should thereafter apply on all such traffic in this territory.

The history of this action is shown in the record. It appears that the matter was under consideration for several months. At a meeting on April 10, 1912, this resolution was adopted:

Recommended that no fares of less than 2 cents per mile in each direction from, to, or between points in central passenger association territory shall be authorized or participated in by lines in central passenger association territory, including the state of Michigan, for any occasion except homeseekers, regular summer, winter, all-year tourists, and the so-called short-limit summer tourist business, with the further understanding that this eliminates the possibility of contracting or arranging for any reduced fares of any kind of less than 2 cents per mile (other than the exceptions named herein), pending further legislation.

A conversation occurring at the time the increase in the fares was pending before the central passenger association, between the president of one of the complainants and the general passenger agent of one of the defendant lines, which has not been contradicted upon the record, was summed up as follows by the complainant:

He told me that the rate question had not been settled yet, but he hoped that it would be settled satisfactorily, and he said this—that if it was settled that it would be up to myself to bring influence on my friends who were influential in the legislature of the state of Ohio to bring about conditions that would put the 2½-cent rate into effect, and he said to me then—I said supposing we would do that, what would be the result? He said: "Of course I can only say to you, not officially, but I think if that is put in effect you will never hear any more of it."

Further indication that the withdrawal of these fares upon this class of passenger traffic was related to the state legislation is found in a letter from Mr. George W. Boyd, general passenger agent of the Pennsylvania Railroad Company, written to Mr. F. C. Donald, commissioner of the central passenger association. This letter was dated at Philadelphia, July 2, 1912, and is as follows:

DEAR SIR: We were glad to lend our aid to the central passenger association lines in their efforts to secure relief from the 2-cent law by refraining from running our usual special excursions between Pittsburgh, Buffalo, and intermediate points in the summer season. In view of the fact, however, that a number of the central passenger association lines are running special excursions at rates less than 1 cent per mile, we have decided to renew our special excursion arrangements in the Buffalo and Pittsburgh territories on the basis of rates in effect last season, and which were duly authorized at the meeting of representatives of interested lines held in Buffalo, March 15th.

Yours, very truly,

GEORGE W. BOYD,  
*General Passenger Agent.*

In pursuance of the policy announced by Mr. Boyd, the Pennsylvania Railroad Company, operating east of Pittsburgh, again established special fares adapted to this class of passenger traffic. The maintenance of such fares by the Pennsylvania Railroad Company, from Pittsburgh in one direction, while like fares are denied by the Pennsylvania Company, and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, affiliated with the Pennsylvania lines to points west of Pittsburgh, is made the basis for a charge of discrimination by the complainants herein. There is no proof, however, that the petitioners are injured by the lower fares from Pittsburgh to the east. The record shows rather that these parties do not move at all at the regular fare. The withdrawal of the special fares to the east from Pittsburgh would not, in this view, cause any travel to petitioners' grounds at such regular fare.

Two claims made by the respondents will be considered. One is that special passenger trains are undesirable, tending to demoralize the operations of the railroads, and the other is that the passenger fares provided for these one-day trippers were exceedingly low and that an increase therein should be allowed.

As to the first of these contentions it needs only to be said that the rail carriers have not withdrawn their tariff offers to provide special trains for any persons applying therefor. The respondents here still stand ready to furnish extra trains upon notice at any point on their system, not only for round-trip movements but for one-way movements, at regular fares, and this upon a guaranty covering a less number of persons than would be required if the fares here considered were restored.

With regard to the claim that the fare of 80 cents for adults and 55 cents for children from Carnegie, Pa., to Chester, W. Va., and return was unduly low, the following is to be said:

This fare was voluntarily established by the Pennsylvania lines, and continued in effect for more than 10 years. That the business developed by it was regarded as desirable is shown by the fact that it was cultivated and advertised. The carrier maintained a traveling passenger agent, whose business it was to call upon societies and solicit the routing of their excursions via its line. The reason for the solicitation of this business is to be found in the fact that it was highly profitable. Complainant has drawn attention to the passenger train-mile revenue of the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company as reported to this Commission for the fiscal years 1909, 1910, and 1911, as follows:

Name of carrier.	Passenger service train revenue per train-mile.		
	1909	1910	1911
Pennsylvania Company.....	\$1.25847	\$1.029075	\$1.30735
Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.....	1.33740	1.299540	1.32497

In comparison with the above figures, the record indicates the remunerative character of this guaranteed traffic. It shows that the special trains from Pittsburgh to Chester in 1911, the last year of the fares adapted to this business, yielded an average of \$3.56 per train-mile, while those from Carnegie during that year averaged \$3.31 per train-mile, or considerably more than double the average received by the Pennsylvania Company from its entire train mileage, the average including these profitable picnic trains. This showing is the more remarkable when it is noted that a majority of the trains from Pittsburgh were operated at the fare of 55 cents per person given to schools and Sunday schools—the fare which Mr. Moody in his letter above quoted declared to be “about at cost”—while those from Carnegie were operated at the fare of 65 cents per adult and 35 cents per child.

It is interesting to note that at a fare of 2 cents per mile these special trains to Chester would have yielded \$10.82 per train-mile. The contrast between the return per train-mile from this class of traffic and that derived from other passenger service is emphasized when it is recalled that respondents at the present time hold themselves ready to operate a special train with baggage car between Carnegie and Chester upon a guaranty of a sufficient number of passengers at regular fare to yield a minimum train-mile revenue of

only \$1.18. These high earnings per train-mile on the excursion business are the result of the guaranty which is a feature of these one-day fares of great value to the carrier. The trains operated under these fares are always loaded to capacity. The larger number of passengers per train-mile more than recoups the carrier for the low fare per passenger per mile.

The record also shows that during the summer of 1911 the total number of people carried by the Pennsylvania lines to Rock Springs Park was 91,524. The total number of trains employed was 169; the gross railroad revenue was \$55,402.50; and the average train-mile revenue was \$3.631. A witness for the complainants who had formerly been in the employ of the Pennsylvania Railroad stated that the cost of excursion service per train-mile arrived at by officers of that road while he was in its employ was 65 cents, and that the guaranty demanded for such excursions was always such as to fully cover this cost and allow the carrier a satisfactory profit on the business.

The effect of the increase of the fare for this class of passenger business to the basis of 2 cents per mile was to end its movement. The record shows that prior to the change of fare 51 outings had been booked for Rock Springs, and the Pennsylvania lines had been notified that enough passengers would be guaranteed to make 1,400 coach loads. Upon receipt of notice of the change of fares all of these bookings were canceled.

Likewise, the fares from Youngstown to Conneaut Lake paid more per train-mile than the average passenger earnings of the Lake Shore & Michigan Southern. That carrier's reports to the Commission show that its average passenger-train-mile earnings have been: For 1909, \$1.68; for 1910, \$1.60; for 1911, \$1.61. These one-day parties from Youngstown to Conneaut Lake for 1910 paid this carrier \$2.59 per train-mile. That the withdrawal of these fares by the Lake Shore was an abandonment of revenue is further shown by the fact that the Bessemer & Lake Erie Railroad, which joins to make the through route from Youngstown to Conneaut Lake, desiring that this profitable business should continue, offered to give the Lake Shore its full fare of 2 cents per mile as a division. The Lake Shore, however, insisted upon canceling the fares. The result was that some 22 bookings for one-day movements to Conneaut Lake via the Lake Shore and Bessemer & Lake Erie were canceled.

The Commission is of the view that these movements of passengers in guaranteed numbers upon special trains are excursions to which the carriers may give, but to which this Commission has no power to compel them to give, a different fare per passenger from the reasonable fare charged for the transportation of single passen-

gers upon regular trains. *Field v. S. R. Co.*, 13 I. C. C., 298; *The Commutation Rate Case*, 21 I. C. C., 428; Act to Regulate Commerce, sec. 22.

The record indicates, however, that the business is profitable to the carriers and is viewed by them as desirable. The state-rate litigation which prompted the withdrawal of these fares has now been concluded. It is the Commission's view that the carriers were mistaken in fearing that any tribunal would regard the establishment of the fares here considered as admissions that any particular fare per mile for the ordinary one-way movement of passengers with baggage-checking privileges is reasonable. The fares for the ordinary movement of passengers are not properly to be compared with the fares provided for these excursion parties in view of the substantially different conditions attached.

Inasmuch as the establishment of these excursion fares is in the interest of the carriers, and inasmuch as the occasion for the fear which prompted their removal has passed, it is to be expected that they will be again restored. The Commission is of the view, however, that it has not the power to compel their restoration, and in that view the complaint will be dismissed.

**McCHORD, Commissioner**, dissenting:

I do not agree that we are without power to fix for these special passenger movements any other rate than that applicable to single passengers upon regular trains. There is no dispute that the service here considered differs materially from any other form of passenger transportation. *Field v. S. R. Co.*, 13 I. C. C., 298, involving party-rate tickets for theatrical parties, was decided on the broad ground that the Commission could not compel carriers to accord special rates and should not be regarded as controlling here. The other citation of the majority, *Commutation Rate case*, 21 I. C. C., 428, to my mind is in support of the Commission's authority here. After exhaustively considering the origin and development of the commutation service we there found it to be "an independent and a special service and a special kind of traffic" and saw "no reason why the reasonableness of the fares demanded for the service might not be looked into by the Commission under section one" (p. 443). That to this conclusion we were largely led by a consideration of the volume of traffic is indicated by the following:

In *Interstate Commerce Commission v. B. & O. R. R. Co.*, 145 U. S., 263, it is intimated that in framing the act to regulate commerce the Congress did not intend to ignore the principle that one can sell at wholesale cheaper than at retail. Applying the thought to the thousands of commuters directly affected by this proceeding it must not be forgotten that by separating their homes from their places of business they have committed themselves, to the several



defendants that respectively serve them, as daily travelers back and forth over their lines—as wholesale purchasers of their transportation. Out of this relation grows a number of economies to the carrier which we need not stop now to point out. It suffices to say that in our judgment the carriage of a commuter differs in many respects from other passenger traffic and is an independent and a special service and a special kind of traffic. 21 I. C. C., 443.

Giving like weight to the same factor in the instant case, I can arrive at no different conclusion. True, it was said in the *Commutation Rate case* that the view of the Commission had been that carriers might withdraw from the policy of issuing mileage books and *excursion tickets* and could not be compelled to resume the practice; but this was qualified by the further announcement that “there might be exceptional circumstances where a different conclusion would be required,” and it is my opinion that the “exceptional circumstances” are here presented.

For 10 years or more these defendants have held out to the world that they would transport by special train a minimum number of passengers, without baggage, going and returning the same day, at rates almost uniform throughout the period. The propriety of this special classification was recognized and the policy inaugurated voluntarily by defendants, continuing on portions of their lines up to the present time, but in this section withdrawn to coerce legislative action. Carriers are not free to hold out at one time that such business is fairly to be classified separately from normal passenger traffic, and at another time, with apparently no justification beyond resentment at state legislative action, to hold that it is no longer to be so classified but must move under the rate provided for one-way passengers who give no guaranty as to numbers and who receive baggage checking and other privileges. Moreover, this Commission, by section 15 of the act to regulate commerce as now amended, has authority, whenever it is of opinion that any individual or joint classifications are unjust or unreasonable, or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of the act, to make an order that the carrier or carriers concerned shall cease and desist from such violations to the extent to which the Commission finds the same to exist, and to require that the carrier or carriers shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. Under this authority, I am of opinion that even if the policy of issuing one-day excursion tickets, number guaranteed, had not been inaugurated by the carriers, this Commission could find and prescribe a reasonable classification for this traffic independently of any other passenger service. In my opinion, the existing rates for the service contemplated are unreasonable and the old rates should be ordered restored.

No. 4198.  
IN THE MATTER OF EXPRESS RATES, PRACTICES,  
ACCOUNTS, AND REVENUES.

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No. 1280.  
CALIFORNIA COMMERCIAL ASSOCIATION  
v.  
WELLS FARGO & COMPANY.

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No. 1911.  
M. S. KOHLBERG & COMPANY  
v.  
WELLS FARGO & COMPANY.

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No. 1916.  
CALIFORNIA COMMERCIAL ASSOCIATION  
v.  
WELLS FARGO & COMPANY.

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No. 2175.  
BENGT E. SUNDBERG  
v.  
GREAT NORTHERN EXPRESS COMPANY ET AL

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No. 2176.  
SAME  
v.  
AMERICAN EXPRESS COMPANY ET AL.

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No. 2246.  
SAME  
v.  
WELLS FARGO & COMPANY.

No. 4302.

**MEMPHIS FREIGHT BUREAU ET AL.**

v.

**ADAMS EXPRESS COMPANY ET AL.**

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*Submitted April 1, 1913. Decided July 24, 1913.*

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Upon further hearing, under the report and order of June 8, 1912, and the order of December 10, 1912, and after due consideration of the showing made by the respondents herein, *Held:*

1. That the said respondents be required to publish the proposed Directory of Express Stations fixing the location of each such station by block number and sub-block letter, as described in the report and order of June 8, 1912.
2. That they shall be required to issue a joint publication wherein the established pick-up and delivery limits shall be specifically defined as proposed in said report and order.
3. That they shall adopt the block system of stating rates as proposed in said report and order.
4. That they shall adopt and jointly publish a new and uniform classification as proposed in said report.
5. That they shall adopt and jointly publish the rules and regulations as proposed in said report and order.
6. That they shall discontinue the use of the present form of express receipt and adopt that herein prescribed.
7. That the joint rates proposed in said report and order are just, reasonable, and nondiscriminatory, and that the said respondents shall cease and desist from charging rates in excess thereof.
8. That they shall publish joint tariffs as proposed in said report and order conforming to those contained herein.
9. That the order of June 8, 1912, be amended so as to require the attachment of the waybill and label therein prescribed to only one package in a shipment of two or more packages of perishable property.

*W. A. Ryan and Frank Lyon* for Interstate Commerce Commission.

*J. D. Armstrong* for defendants in No. 2175.

*W. W. Baldwin and P. S. Eustis* for Chicago, Burlington & Quincy Railroad Company.

*H. C. Barlow* for Chicago Association of Commerce.

*Perkins Baxter* for Traffic Bureau of Nashville, Tenn.

*Britton & Gray and Evans Browne* for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas of Texas Railway Company.

*Clyde Brown and O. E. Butterfield* for New York Central & Hudson River Railroad Company; Lake Shore & Michigan Southern Railroad Company; Michigan Central Railroad Company; and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

*I. I. Brown* for complainants California Commercial Association.

*Sherman E. Burroughs* for state of New Hampshire.

*B. D. Caldwell, F. S. Holbrook, and C. W. Stockton* for Wells Fargo & Company.

*Carter, Ledyard & Milburn, J. H. Bradley, and J. W. Welsh* for American Express Company.

*W. H. Chandler and F. B. De Berard* for Express Rate Conference and Merchants' Association of New York.

*W. A. Colston* for Louisville & Nashville Railroad Company.

*George Cosson* for state of Iowa.

*James L. Cowles* for Postal Progress League.

*C. M. Cunningham and Lawton Cunningham* for Central of Georgia Railway Company.

*Chester M. Dawes* for Chicago, Burlington & Quincy Railroad Company and Colorado Southern Railway Company.

*C. L. Delbridge* for the people as a whole.

*W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company.

*Chas. Donnelly* for Northern Express Company.

*Charles D. Drayton* for Charles A. Stickney Company.

*Walter Drew* of National Association of Master Bakers.

*F. A. Durban* for Baltimore & Ohio Railroad Company.

*O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

*Geo. B. Elliott* for Atlantic Coast Line Railroad Company.

*Challan B. Ellis* for Corby Brothers Bakery and the Corby Company.

*Joseph Ellis* for Jacksonville Mail Order Association.

*R. V. Fletcher* for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company.

*R. S. French* for National League of Commission Merchants.

*John W. Griggs and Benjamin L. Fairchild* for Merchants' Association of New York City, Boston Chamber of Commerce, Chicago Association of Commerce, and others.

*William D. Guthrie* for Adams Express Company.

*K. B. Halstead, Robert Dunlap, T. J. Norton, S. T. Bledsoe, and Gardiner Lathrop* for Atchison, Topeka & Santa Fe Railway Company.

*T. B. Harrison, jr., and J. Zimmerman* for Adams Express Company and others.

*H. G. Herbel and F. G. Wright* for Texas & Pacific Railway Company and International & Great Northern Railway Company.

*J. W. Hicks* for Sears, Roebuck & Company.

*Walker D. Hines* for American Express Company and others.

*Jno. B. Hunt* for Standard Paint Company.

*D. O. Ives* for Boston Chamber of Commerce.

*Herbert Jackson* for mail-order houses.

*Francis B. James and E. M. Williamson* for Meyer & Company.

- N. B. Kelly* for Philadelphia Chamber of Commerce.  
*D. N. Lewis* for Iowa Railroad Commission.  
*E. C. Lindley* for Great Northern Express Company and Great Northern Railway Company and others.  
*J. P. Loeb* and *E. G. Kuster* for Merchants & Manufacturers Association of Los Angeles, Cal.  
*Geo. Stuart Patterson* for Pennsylvania Railroad Company.  
*S. R. Prince* for Mobile & Ohio Railroad Company.  
*James Manahan* for complainant Sundberg.  
*Seth Mann* for Pacific Coast Jobbers & Manufacturers' Association.  
*S. C. Mead* for Merchants' Association of New York City.  
*T. W. Morton* and *P. W. Coyle* for Business Men's League of St. Louis, Mo.  
*O'Brien, Boardman, Platt & Littleton, G. W. Field, Frank Platt,* and *B. P. Kerfoot* for United States Express Company.  
*T. K. Riddick* for Memphis Freight Bureau and others.  
*William Savacool* for Chamber of Commerce of Manchester, N. H.  
*H. A. Scandrett* for Union Pacific system and Southern Pacific system.  
*John G. Schaick* and *T. J. Norton* for Kansas City Southern Railway Company.  
*Stewart Shearer* and *J. D. Patterson* for Southern Express Company.  
*George T. Simpson* for State of Minnesota.  
*W. H. Stutsman* for North Dakota Board of Railroad Commissioners.  
*H. A. Taylor* for Erie Railroad Company and Chicago & Erie Railroad Company.  
*Alfred P. Thom* for Southern Railway Company; New Orleans & Northeastern Railroad Company; and Alabama & Vicksburg Railway Company.  
*Clifford Thorne* for Railroad Commission of Iowa.  
*Vogelsang & Brown* for M. S. Kohlberg & Company.  
*J. Prince Webster* for Railroad Commission of Georgia.  
*H. T. Wickham* and *W. S. Bronson* for Chesapeake & Ohio Railway Company.  
*L. E. Wilcox* for International Silver Company and Meriden (Conn.) Business Men's Association.  
*William A. Wimbish* for Atlanta Freight Bureau.  
*Thomas L. Wolf* for Illinois Railroad & Warehouse Commission.  
*Fred H. Wood* for St. Louis & San Francisco Railroad Company and Chicago & Eastern Illinois Railroad Company.  
*C. C. Wright* for Chicago & North Western Railway Company.  
*F. G. Wright* and *H. G. Herbel* for Texas & Pacific Railway Company and International & Great Northern Railway Company.

## REPORT OF THE COMMISSION.

**MARBLE, Commissioner:**

On June 8, 1912, a report and order of the Commission, written by Mr. Commissioner Lane, issued in the above matters. By the order five requirements were laid upon the respondents, as follows:

(1) That not later than September 1, 1912, they adopt the forms of waybills and labels and the practices relative thereto prescribed in the Commission's report.

(2) That not later than December 1, 1912, they issue a joint Directory of Express Stations showing the location of all express stations in the United States according to the block system set forth in the report, and also defining in specific terms the gathering and delivery limits within which free pick-up and delivery service is made.

(3) That not later than December 1, 1912, they establish, and jointly publish, through routes between the principal points in the United States following the main lines of travel, with a rule giving the consignor the right to designate in writing the joint through route thus established to be observed in the transportation of any given shipment.

(4) That not later than October 9, 1912, they show cause why the rules, regulations, and practices found to be reasonable in the Commission's report, other than those here enumerated, should not be made effective.

(5) That not later than October 9, 1912, they show cause why certain rates set forth in said report should not be put into effect.

The matters referred to by subdivision 4 of the order were principally three, as follows:

(a) That the carriers should adopt a new and simple method of stating rates by which one not expert in the reading of tariffs might know what rate he should be charged. To this end, in the report of June 8, 1912, a map of the United States was shown, in which the entire territory was divided into 950 blocks for rate-stating purposes. Each block on the proposed map contains the territory embraced within the boundary described by the standard parallels of latitude and the standard meridians of longitude. A complete showing of this method of stating rates is to be found in the report of June 8, 1912.

(b) That in connection with such statement of express rates a new classification of property for transportation should be adopted in which the standard, or first-class, rate should be that on merchandise, and to which there should be but one great class of exceptions consisting of articles of food and drink.

(c) That the rules governing the practices of express carriers should be revised, simplified, and amended.

In its report of June 8, 1912, the Commission drew attention to the fact that the respondents have a considerable number of commodity rates to govern shipments of property moving in large quantities. As to such rates, it was indicated that the carriers should feel free to continue them. It was recommended, however, that all such rates should be based on conditions of service and should, for convenience, be stated in percentages of the merchandise rates applicable between the points of shipment and points of destination. If in any proceeding the Commission should find it proper to prescribe such commodity rates, the direction will be that they shall be so expressed.

With regard to the requirements contained in the order of June 8, 1912, the present situation is as follows:

(1) The carriers on the day appointed, September 1, 1912, adopted the combined waybill and label, and the practices relative thereto as prescribed in the Commission's report. It now appears that the requirement that a label shall be affixed to each package in a shipment of perishable property comprising a number of packages operates at some points to retard prompt movement. Fish, fruit, vegetables, and like commodities should be moved with the utmost dispatch. The order herein will provide that a label need be attached to only one package in each such shipment, such label to indicate the number of packages in the shipment.

(2) The proposed Directory of Express Stations has been prepared by the carriers and is in type ready for issuance as soon as the final order as to rates shall be made. The failure of the carriers to issue this directory on December 1 followed a request by them to this Commission for delay and acquiescence in such request by the Commission. The order herein will provide that such directory shall be issued not later than October 15, 1913, the date hereinafter fixed for the application of the block system of stating rates and the new rates herein prescribed.

(3) With regard to the third portion of the order of June 8, 1912, in which it was required that through routes should be established and published, the express companies suggested that the number of indirect routes is so large that the publication thereof in a tariff would be unduly burdensome without corresponding advantages to shippers. On November 30, 1912, therefore, the Commission issued an order in this regard as follows:

That the respondents, and each of them, are required to immediately appoint a representative who together with a representative of the Interstate Commerce Commission hereafter to be named shall constitute a committee to be known as the Direct Routing Committee, the duties of which board shall be to study existing express routes and consider all complaints of indirect or circuitous routing and proposed amendments to the existing routes of express carriers so as to give to shippers the advantage of the most direct normal route in point of time.

This committee has been named. Its labors may be expected to minimize the evil of indirect routing which in the past has operated to deprive shippers of the dispatch which should be a feature of the express business. In any case where reasonably expeditious through routes do not result from the conferences of this committee the Commission has ample authority under the act to regulate commerce to prescribe new and reasonably direct through routes.

(4a) The block system of stating rates is admitted by the carriers to be practicable and satisfactory. By its simplicity and intelligibility, it will afford the means for such a statement of express rates as will really publish them to shippers. The order herein will therefore prescribe such block system of stating rates as the reasonable practice to be followed by the respondent carriers on and after October 15, 1913.

(4b) An informal joint committee representing respondent carriers and the complaining shippers has cooperated in suggestions for a new classification of property for express transportation. The resulting classification is fairly made and reasonable. It appears herein as Appendix A to the order.

(4c) The classification above mentioned includes also new rules governing the practices of express companies which are so revised, simplified, and amended that they are just and reasonable. Such rules are to be found in connection with the classification in said Appendix A. Portions of these rules, regulations, and practices were proposed by the respondents for their own protection and have been found to be just and reasonable requirements.

In the report of June 8, 1912, it was found that the form of receipt for property issued by the respondent carriers was so worded as to improperly limit the rights of the shippers thereunder and to discourage the presentation of claims by the shippers whose consignments had been lost or damaged in transit. One of the matters considered by the informal joint committee above mentioned in connection with the new classification was a proposed new form of express receipt. All of the respondent carriers represented in this committee agreed that the form of express receipt determined by that committee and shown in said Appendix A is just and reasonable. The Adams Express Company has since withdrawn its agreement on this point.

This form provides that the liability of the carrier shall be limited to a maximum of \$50 on each shipment weighing less than 100 pounds, and to a maximum of 50 cents per pound on shipments weighing more than 100 pounds, unless a greater value is declared at the time of shipment. The rates prescribed are intended to cover the movement of the great mass of merchandise of moderate value. The classification prescribed provides for valuation charges upon arti-



cles of higher value. In the case of shipments of extraordinary value, not only is the carrier entitled to notice of such value in order that its care may be increased, but it is also entitled to extra compensation for the increased liability and care. Under the law it is the duty of shippers of property of more than ordinary value to bill the same at its true value in order that the legal rate may be applied. In the case of a shipper declaring a false value to secure a reduced rate one of the penalties under this form of receipt is an estoppel by which he is precluded, in case of loss or damage, from denying the correctness of such value so given.

Neither is it conformable to plain principles of justice that a shipper may understate the plain value of his property for the purpose of reducing the rate and then recover a larger value in case of loss. Nor does a limitation based upon an agreed value for the purpose of adjusting the rate conflict with any sound principle of public policy. *Adams Express Co. v. Croninger*, 226 U. S., 491.

The Commission again finds that the form of receipt now in use by the express companies is unjust and unreasonable and liable to mislead shippers. It finds that the form shown in Appendix A is the just and reasonable form to be issued by the respondent carriers as a practice. It will, therefore, in the order hereto be prescribed as the form of express receipt to be used by the respondent carriers in connection with all interstate shipments on and after October 15, 1913.

It has been suggested on behalf of these carriers that the amount of any c. o. d. bill for collection from a consignee shall be considered as a declaration of the value of the shipment, unless a greater value is declared. Such a provision seems to be a reasonable measure of protection to the carriers which they may adopt if they are so inclined.

From the foregoing it appears that serious controversy in this matter now exists only as to the amounts of the various rates to be applied under the block system.

The respondents, in argument and brief, have raised the contention that no order can be made concerning their schedules of rates as a whole, for the reason that the Commission can not act except after hearing. To the rule relied upon the Commission gives complete adherence. It does not follow, however, that in dealing with the rates of express companies, which are intimately related one to another, the Commission must institute a separate investigation as to each rate. Stated in its extreme form, such a view would lead to the conclusion that express companies are outside the act. Each company has some millions of rates. Time would not be long enough to institute a separate investigation as to each of these. But the first fact developed by this investigation was that the rate scales of these respondents must be studied as a whole if justice is to be done

to the express carriers or to the public. This investigation started with the consideration of single rates as to which complaint was made by shippers at San Francisco, Cal., and Minneapolis, Minn. The San Francisco complaint brought before the Commission the rate between that city and New York, and as a consequence made necessary a consideration of the rates to all other Atlantic coast ports based upon that rate, as well as between all Pacific coast terminals and all Atlantic coast terminals. This also necessitated a consideration of the rates to and from all intermediate points on the transcontinental routes, and such consideration necessarily involved the rates between the intermediate points as well as between the terminals and the intermediate points.

The Minneapolis complaint brought before the Commission the rates between Minneapolis and St. Paul and 46 representative points. These rates covered routes radiating like the spokes of a wheel from Minneapolis to all parts of the United States.

Subsequently petitions in intervention were filed by shippers' organizations of Atlanta, Memphis, and Nashville, involving rates upon routes radiating from each point in the same way.

A petition was also filed on behalf of commercial organizations representing 212 of the largest cities of 42 states. Although specific rates were not named in this petition, the complaint involved the reasonableness of all the rates between these cities, and necessarily included the rates between them and the points intermediate to them upon all routes.

As a result of its investigation, the Commission was convinced that if unbearable discrimination and confusion was to be avoided its order must take into account the entire body of rates for express service. In this respect the express service is radically different from the services performed by the railroads in the carriage of passengers and property, and is more precisely comparable with the service performed for the public by the Post Office Department. No rate prescribed in the order hereto attached has been made without an investigation and a hearing. The rate structures established by the respondents have all been exhaustively discussed in the testimony and analyzed by the Commission. The rates determined by the Commission to be reasonable and just have also followed a like exhaustive investigation, and also have been in detail submitted to the analysis and criticism of the respondents and of shippers throughout the country for a period of several months. Having determined after investigation, as it did, that justice as to express rates could be reached only by the form of order here shown, and having submitted every detail of that order, not only to its own exhaustive analysis, but also to the analysis and criticism of the respondents and the shippers of the country, it is apparent that the

fullest possible hearing has been given as to all the rates shown herein.

The long delay in the issuance of the Commission's order as to the rates requires explanation. It has arisen from the extraordinary care exercised by the Commission to make its order entirely fair to the express carriers. To this end prolonged investigation of the actual business of the various respondents was made, approximately one year being consumed in examining the books and records of the respondents. The results of this painstaking investigation are to be found in the working papers of the Commission, and in the various tables and exhibits prepared therefrom, all of which were placed in the record. Thereafter printed inquiries were addressed to the respondents requiring voluminous and exhaustive statements from them supplementary to the information secured by the examination of their books and records. These responses were then digested in the office of the Commission, the extensive statement of facts contained in the appendices to the report of June 8, 1912, being in large part obtained therefrom. Also the existing tariffs of all the respondents were examined and subjected to minute and painstaking analysis and comparison one with the other as well as with the tariffs of rail carriers for transportation of property over the same routes.

Throughout the time of this examination, moreover, informal complaints, some thousands in number, were received from shippers to the effect that specified rates and practices of the respondents were unjust and unreasonable. A volume of these informal complaints was incorporated in the record and brought to the attention of the respondents. Particular attention was given to the examination of each such complaint with a view to further familiarizing the Commission with the practical difficulties experienced by shippers under the present rates and practices of the express carriers.

In addition to all the above, prolonged informal conferences between the Commission and the executive heads of the respondents, including traffic officers and counsel, were held in the endeavor to arrive at a common understanding of the various problems involved. At these conferences proposed bases for rates were informally laid before the Commission by the respondents, and an effort was made to arrive at a common understanding in this regard also. These conferences developed, however, that no common ground could be found owing to the impossibility of acceptance by the Commission of the percentage contracts between the express companies and the rail carriers as making a legal or moral necessity for higher rates than could be justified otherwise. The offers of the express com-

panies indicated the possibility of agreement upon a hundred-pound scale substantially lower than that here prescribed. The chief opposition of the respondents, then and now, is to any substantial modification of the scale of rates for the transportation of packages less in weight than 100 pounds. While such packages must have rates based upon weight, yet as they move as separate shipments with individual pick-up and delivery service, each must pay for such service as an individual shipment. The amount of such service varies but slightly with the weight of the package and not at all with the length of its rail journey. It is entirely performed by the express carrier, yet the demand is that shippers shall be compelled to pay upon such packages rates sufficiently high to yield to the express carrier, out of a division ranging from 35 per cent to 60 per cent, an amount sufficient to compensate it. Every addition to the rates paid by the shipper for such service as distinguished from the line haul is cut in two by the contracts and must be approximately doubled if the express carrier is to be compensated.

Likewise, in the case of rates for long distances, the service performed by the rail carrier, especially on shipments of large weight, is relatively much greater than that performed by the express company. As to these rates, the contention is that full compensation for the rail carrier must be found in half or less than half thereof. Any allowance in such rates for the benefit of the rail carrier is cut in two by the contracts.

The Commission has repeatedly decided that these contracts can not be accepted as a basis for the making of rates. If confirmation of the correctness of this view were needed, it is found in the figures hereinafter discussed, which show that since 1909 the increased traffic of these respondents has been insufficient to meet the increases in the demands of the rail carriers.

The bulk of the express business is small packages carried for comparatively short distances. Under the percentage agreements no fair allowance for pick-up and delivery service on such packages is possible, because every such allowance is at once divided with the rail carriers.

The inevitable result of the constantly increasing proportion of express revenues paid to the rail carriers must be to constantly increase the cost of the service to the shipper if the Commission is to yield to the demand that these contracts be accepted as binding upon it. If, as the answers of these respondents claim, their net operating revenues are now insufficient to provide adequate return upon the capital employed, then, if this Commission is to regard these contract payments as a legitimate charge upon the traffic, the logical

result must be to increase and not to decrease express rates. As the contracts are mere expressions of the wills of the parties thereto, they could always be so formed as to justify any rate that the beneficiaries thereof might consider possible of collection. It was therefore necessary to end the informal conferences with the executive heads of the express companies without agreement upon any basis for the rates upon small packages for short distances as well as for the rates upon large packages for long distances.

As a result of all the foregoing efforts, the Commission returned to its ordinary procedure in rate cases and itself formulated and published the rates embodied in its report of June 8, 1912. It did, however, in this regard adopt the unprecedented method of exposing the rates prepared by it to the analysis and criticism of the respondents before the issuance of its final order. The order of June 8 in this regard was as follows:

That said respondents be, and they are hereby, notified and required to show cause before this Commission, on or before the 9th day of October, 1912, why the following rates set forth as proposed rates should not be put into effect between the points herein designated, as just, reasonable, and nondiscriminatory rates, and in the manner and form for the stating of said rates proposed in the accompanying report and appendix.

By this method it was hoped that every valid objection to the rates made by the Commission might be developed, and that all changes necessary to make them entirely just might be made.

The rates for express transportation between various points in the United States contained in the order of June 8, 1912, were typical and representative of all the rates here prescribed. At various times between that date and December 10, 1912, additional proposed rates in harmony with those contained in the report were served upon the respondent carriers, with an order that they also be considered in the same manner as those contained in the report. These rates taken together constitute a system of express rates between all of the blocks served by the respondents herein. This system of rates as an entirety was used by the carriers in the returns made by them which are hereinafter discussed.

On October 9, 1912, the respondents appeared and pleaded that the rates proposed by the Commission were unduly low. It was claimed that the rates furnished by the Commission had been applied to the actual business of the respondents on the dates named below: For the Adams Express Company on October 18, 1911; for the American Express Company on August 1, 1911; for the Southern Express Company on November 15, 1911; for the United States Express Company on "a composite day" in March, 1911; and for Wells Fargo & Company on 12 selected days, one in each month of

the year 1911. It was claimed that the resulting figures indicated a reduction in gross revenues of more than 30 per cent. This statement was utterly inconsistent with the results of the comparisons of its proposed rates with the existing rates of the companies which had theretofore been made by the Commission. It was also inconsistent with the estimates made by the Commission of the effect of its rates upon the actual business of the Adams Express Company and of the United States Express Company for single days which had theretofore been reported to the Commission.

The express companies admitted at this argument, however, that the showing which they were able to make at that time as to the effect of the rates as applied to actual business was incomplete and unsatisfactory. They asked for, and were given further time to complete and correct their estimates.

The Commission, desiring that there should be uniformity in the presentation of the figures developed by the respondents, issued, on December 10, 1912, an order prescribing in detail the forms to be used in presenting the same. By this order the express companies were required to answer certain specific inquiries and to support their answers with sufficient detail to enable the Commission to verify the results.

The responses of the express companies to this order all purport to cover the business of October 23, 1912, and not the business of the days in 1911, which was made the basis of the argument on October 9, 1912. Certain abnormalities in the business of October 23, 1912, hereinafter described, indicate that larger claims of loss from the proposed rates may be made upon the basis of the business of that day than would be possible upon the basis of the business of a normal day. Five of the respondents filed their working sheets and primary detail papers.

The returns of the Globe Express Company claim an actual increase of revenue under the proposed rates. The Western Express Company claims a reduction of 4.96 per cent. The Northern Express Company claims a reduction of 18.67 per cent.

Six of the respondents, however, joined in declaring that of the rates proposed by the Commission only those which are lower than present rates can be made effective, and that the percentage of loss, therefore, should be determined by applying the Commission's rates only where they make reductions, omitting any estimate of permitted increases.

Appendix A of the brief of the five leading respondents contains a statement based upon this theory, which purports to arrive at the

28 I. C. C.

gross reduction in revenue caused by the proposed rates by counting "the loss on each individual shipment." The following is compiled therefrom:

*Statement showing the ratio of reduced revenue on interstate shipments to gross revenue from all sources for Oct. 23, 1912, including revenue from transportation of money and valuables.*

Express companies.	Reduction of revenue from—		
	Interstate merchandise shipments.	Interstate general special shipments.	Total for all interstate traffic, all classes.
	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Adams.....	15.36	0.71	16.07
American.....	13.14	.74	13.88
Southern.....	17.50	.94	18.44
United States.....	14.14	.67	14.81
Wells Fargo.....	14.89	.47	15.36
Average for 5 companies.....	14.65	.68	15.33

The contentions of the respondents that the rates submitted by the Commission are unduly low are based upon the theory that the business of October 23, 1912, was normal and fairly representative of the conditions governing traffic throughout the year. It has been assumed by them that the various classes of traffic move in the same ratio one to the other each day throughout the year, and that whatever reductions in revenue are indicated by the experimental application of the Commission's rates to certain classes of this traffic for the selected day must be accepted as proving the results that would follow the application of such rates to the actual business of extended periods.

It is apparent that the test of October 23 has produced results which are not indicative of the results that would follow the adoption of these rates, for it is evident from the returns that the business of October 23 was abnormal.

The total revenue from express transportation of the nine companies that have responded to the Commission's order, for the year ended June 30, 1912, was \$151,706,386.79; the total gross revenue of these same companies from express transportation for the month of October, 1912, was \$15,498,708.86, or an amount more than one-tenth as great as the total revenue for the preceding fiscal year. The average daily revenue, based upon 313 business days (the factor employed by the Great Northern Express Company), for the preceding fiscal year was \$484,684.94. The reported actual revenue for October 23 was \$544,161.67, or 12.27 per cent in excess of the average daily revenue for such year. The total gross revenue from express transportation of the five leading respondents for such year as reported

to the Commission was \$143,908,811.06. The average daily revenue on the basis of 313 business days was therefore \$459,772.56. The revenue on October 23, 1912, as reported to the Commission, was \$517,895.34, or 12.64 per cent more than the average daily revenue for the preceding fiscal year. As the respondents have made their claims of reductions in revenue by an application of the claimed percentage of loss for the one day to the total revenue of the preceding fiscal year, the nature of the revenue of October 23 is of the greatest consequence.

During the year ended June 30, 1909, this Commission required all of the express companies under its jurisdiction to report for three months—the months of April, August, and December, 1909—the total number of pieces of express matter carried for revenue, the total weight thereof, and the total revenue derived therefrom. The periods covered by these reports are hereinafter referred to as “the three months.”

When this general investigation was instituted the Commission, in order to test the accuracy of the returns for the three months as made by the carriers involved, caused a special examination to be made of the records of the Adams Express Company and the United States Express Company for one day each. The day selected for the Adams Express Company was August 18 and that selected for the United States Express Company was December 22. The results of such investigation were confirmatory of the results of those reports as to average weight of packages carried and average revenue realized therefrom.

The average weight per piece of express matter, during the three months, as established by the reports of each of the respondent carriers when compared with the average weight per piece of express matter as shown by the returns of the same carriers for October 23, 1912, was as follows:

	Average weight per piece for the three months.	Average weight per piece as reported for Oct. 23, 1912.
	Pounds.	Pounds.
Adams Express Company.....	30.87	29.91
American Express Company.....	29.78	29.78
National Express Company.....	34.01	34.61
Globe Express Company.....	32.51	31.71
Great Northern Express Company.....	41.46	41.06
Northern Express Company.....	34.54	34.27
Southern Express Company.....	34.50	32.88
United States Express Company.....	31.32	32.52
Wells Fargo & Company.....	38.29	33.78
Western Express Company.....	7.88	34.47

The American Express Company and the National Express Company reported as one concern.



The average revenue per piece of express matter carried on October 23 by each of these carriers, when compared with the average revenue per piece for the three months, discloses remarkable increases, as the following statement will show:

	Average revenue per piece of express matter—		Ratio of average charge for Oct. 23 to average charge for the 3 months.
	For the 3 months.	As reported for Oct. 23, 1912.	
	<i>Cents.</i>	<i>Cents.</i>	<i>Per cent.</i>
Adams Express Company.....	44.15	49.80	112.8
American Express Company.....	45.74	52.00	113.7
National Express Company.....	37.40	52.00	140.9
Globe Express Company.....	39.01	68.00	172.1
Great Northern Express Company.....	49.81	77.36	155.3
Northern Express Company.....	52.13	63.38	121.6
Southern Express Company.....	47.87	48.40	101.1
United States Express Company.....	41.67	49.22	118.1
Wells Fargo & Company.....	50.48	55.70	110.3
Western Express Company.....	39.17	52.13	133.1

Thus, although there was no appreciable increase in the average weight per package, the average revenue per package on October 23, 1912, shows an increase over the average revenue per package for the three months of from 1 per cent to 72.1 per cent.

The scales of rates of these respondents were practically the same on October 23, 1912, as they were throughout the three months. The average weight of the packages was not increased on that day. The causes of the increased revenue must be found either in an increase of the average journey for that day, or in an increased proportion of merchandise shipments, or both.

The returns made by the United States Express Company for October 23, 1912, claim that its revenue for that day was \$76,004, of which the merchandise rates produced \$57,622, or 75.81 per cent. On December 22, 1909, in the full flow of the heavy Christmas business, on the day that produces the greatest possible revenue from the application of merchandise rates, only 69.98 per cent of its total gross revenue resulted from its merchandise rates. The total amount of its earnings for the day from all classes of traffic was \$112,911, of which \$79,017 was derived from its merchandise rates.

The Adams Express Company on October 23, 1912, claims to have earned \$120,350, of which \$94,752, or a little more than 78.73 per cent, resulted from its merchandise rates. The Commission's examination of the records of this company for August 18, 1909, showed that its gross earnings for that day were \$95,109, of which \$64,42, or 68.2 per cent, resulted from its merchandise rates.

So for this day in October (a month which produced over one-tenth of the amount of the gross revenue for the preceding fiscal year)

the Commission is presented a showing which indicates 12 per cent more revenue than the daily average for that year, and from 6 to 10 per cent greater returns from merchandise rates than upon normal days. It is also shown, as a basis for estimated reductions in revenue, average revenues per piece which exceed the averages of the three months by from 1 per cent to 72 per cent, and is asked to conclude therefrom that its proposed rates are too low.

The reductions caused by the Commission's proposed rates fall most heavily upon the long-haul traffic. A preponderance of long-haul traffic in a given day's business would present the indication of a greater reduction than if the business of that day were normal. Likewise, the proposed rates effect a greater percentage of reduction upon shipments carried under the merchandise rates than upon any other class of traffic. Whatever may have been the cause of the increase in the average return per package on October 23, the resulting statements of reductions in revenue, when used as averages for extended periods of normal traffic, are untrustworthy and misleading.

Together with their report of the actual revenues for October 23, 1912, these carriers also reported the revenue that would have accrued on each package had the Commission's rates been applied instead of the present rates. As shown by the accompanying table, the average revenue per package resulting from the proposed rates, as reported by these carriers to the Commission for October 23, 1912, is either only slightly less or else greater than the actual average revenue per package reported by these same carriers for the three months:

	Average actual revenue per piece of express matter for the 3 months.	Average estimated revenue per piece of express matter produced by the Commission's proposed rates for Oct. 23, 1912.
	<i>Cents.</i>	<i>Cents.</i>
Adams Express Company.....	44.15	42.39
American Express Company.....	45.74	47.73
Globe Express Company.....	39.91	71.05
Great Northern Express Company.....	49.81	65.22
Northern Express Company.....	52.13	51.55
Southern Express Company.....	47.87	41.90
United States Express Company.....	41.69	43.22
Wells Fargo & Company.....	50.48	50.87
Western Express Company.....	39.17	49.54

It may be said that the business for October 23 was abnormal, and that is the conclusion forced by an analysis of the figures presented by the respondents. If this be the accepted conclusion, then the elaborate estimates of loss based upon those figures lose all persuasiveness. If this conclusion is not accepted, however, and the business

of this day is regarded as normal, then it appears that the earnings per package at the proposed rates would not have been greatly below the actual average returns per package for the three months in any case, and that as to six of the nine respondents the returns per package for the day at the proposed rates would have been in excess of the actual average returns for the three months at the companies' rates.

The respondents have attempted to show that the proposed rates will not provide a reasonable return to the railroads, the position taken being that even the existing rates do not give adequate return to the railroads in addition to the expenses of the express company and the expenses which the railroads have arbitrarily assigned for the purposes of this controversy to their express operations. This contention, however, is based upon theories and assumptions to which the record gives no support, such as the adoption of an arbitrary and theoretical basis for the apportionment of railroad expenses between passenger operations and freight operations, and the further adoption of a like basis for the allotment of passenger-train expenses between passenger service, baggage service, express service, and mail service.

The conclusion which the Commission is asked to reach upon these theoretical arguments would demand the condemnation as noncompensatory, and burdensome to other traffic, of a multitude of rates established by the railroads for transportation of property on passenger trains. It would also force a further conclusion that the present express rates would in many cases be subject to condemnation as unreasonably low, for the reason that the railroad's share of such rates is insufficient to meet the expenses thus arbitrarily apportioned and give a reasonable return on the property values which the railroads serving these respondents ask to have arbitrarily assigned to the express service.

Respondents' showing of expenses of transportation is not persuasive. These expenses are claimed to be increasing faster than gross revenues. This claim is based upon a showing that includes payments to the railroads under the percentage contracts as such expenses, and which makes no satisfactory showing of the details of the division of the expenses of the express companies between their transportation and nontransportation activities.

The Commission caused a complete examination of the expense accounts of the Adams Express Company, for the month of August, 1909, to be made, and, by eliminations and deductions therefrom of amounts not properly chargeable to express transportation reduced the apparent expenses of such operations from \$1,023,629.07 to \$937,005.93. A similar examination of the accounts of the United States Express Company for the month of December, 1909, resulted in a reduction of the operating expenses chargeable to express trans-

portation from \$778,944.74 to \$721,627.79. The amounts eliminated and deducted were not removed from the accounts as improper disbursements, but as disbursements improperly charged to transportation expenses, to become a burden upon the rates. It appeared that amounts had been charged into these accounts for disbursements made during several prior years, and on account of disbursements made for supplies delivered in succeeding years. Charges made in 1909 for material were again included in the expense accounts of the succeeding fiscal year. At least one item was charged to the expense of 1909 that remained as a cash balance in bank at the close of that fiscal year and was expended in the following year for account of supplies used in that succeeding year and was charged to the operating expenses of that succeeding year.

The respondents, although doing business under names that suggest only the activity of carrying small parcels, are really great business aggregations, with large activities other than transportation within the United States. They are investment companies, bankers, carriers on the high seas and in foreign lands, and agents, performing for pay a wide variety of services other than transportation both at home and abroad.

In the accounts of the Adams Express Company and the United States Express Company for the months named in 1909 the expenses of foreign operations, nontransportation operations, and outside operations, as well as a proportion of the expenses for conducting the financial departments of these companies, were included as transportation expenses.

In response to a series of questions submitted to them by this Commission, these two respondents agreed that such eliminations should be made from their expense accounts in order to determine the proper charge against express transportation.

Comparing the returns made by the Adams Express Company for the year ended June 30, 1912, with the year 1909 (for which year the Commission made an investigation of its accounts), its annual revenues from all sources have increased \$5,430,577, while its operating expenses and payments for express privileges have increased \$6,195,861, or \$765,284 more than the increase in revenue. During the same period the annual revenue of the United States Express Company has increased \$4,269,883, while its operating expenses and payments for express privileges have increased \$4,913,443, or \$643,560 more than the increase in revenue.

Between 1909 and 1912 the gross annual revenues of the five leading respondents increased \$32,565,096; the total operating expenses, including payment for express privileges, increased \$36,046,453, an increase of \$3,481,357 more in expenses than in revenues.

The claim now is that expenses are constantly increasing faster than revenue, in spite of the necessity for large eliminations from the misleading showings for previous years. Under the percentage contracts this result can be produced whenever the contracting parties so desire. The activities of the respondents, aside from their express transportation operations, are so intimately commingled therewith as to make a segregation of the expenses of transportation of doubtful accomplishment owing to the necessity for arbitrary apportionments. If it were necessary to question these statements of expenses before finally adopting the Commission's rates, a far more precise justification of the various elements therein would be required.

For reasons stated in the report of June 8, 1912, the Commission condemned the rates of these respondents as unjust, unreasonable, and unfair, as imposing an unjustifiable burden upon the small packages which the mail did not carry and which the railroad did not wish to carry. The standard merchandise rates were found to be discriminatory as between localities and unreasonable in themselves, the products of unregulated growth in which certain of the larger cities gained undue advantage and preference. It was also found that the railroad in "farm ng out" this branch of its service on a percentage basis had created an ever-ready excuse for high rates. The proposed rates have, therefore, been made on a basis which, to quote the language of that report, makes "certain that ample compensation shall be allowed upon a reasonable basis for the full service given by the railroad for its passenger-train movement, and to the express company for all that it does, both for the railroad and for the shipper."

The argument which has been made by the express companies is based upon the assumption that no greater number of packages will be carried in 1914 than were carried in 1912, even though their unjust practices be reformed and even though the present unjust and unintelligible mass of rates be succeeded by a just and intelligible system. The showing has been considered without rejection of the assumption and without consideration of the increase in business that may be expected to result from fair dealing.

Also no account has been taken of the large amount of business carried by the respondents without charge. While it may be that the franks issued by them are within the law, nevertheless the expense of this portion of the express business is not legitimately to be charged to the paying patrons. It must be treated as a gift from the stockholders of the respondents to the favored holders of the franks. The

amount of this business was not fully reported for October 23. What was reported, however, when computed on the basis of the average charge that accrued on the revenue packages, indicates the possibility of a substantial addition to the yearly revenues without injustice to anyone.

	Pieces carried free (not including empties).	Average revenue per piece for Oct. 23.	Annual revenue- value of free traffic on basis of 313 days.
		<i>Cents.</i>	
Adams Express Company.....	210	49.82	\$32,746.06
American Express Company.....	1,884	52.09	310,708.84
Southern Express Company.....	306	48.40	46,355.80
United States Express Company.....	1,895	49.22	291,941.86
Wells Fargo & Company.....	3,767	55.70	656,742.86
Western Express Company.....	9	52.13	1,467.97
Great Northern Express Company.....	203	77.36	49,153.52
Northern Express Company.....	2,675	68.38	630,666.46
Globe Express Company.....	643	68.69	138,245.84
<b>Total.....</b>			<b>2,058,028.21</b>

The losses in revenue from this free service, calculated according to the methods used by the respondents in estimating the reductions of revenue under the Commission's rates, are thus shown to be over two millions of dollars, if account be taken of only the incomplete showing of free service made in the returns for October 23.

A considerable portion of respondents' argument is to the effect that the loss of business to the parcel post will so far reduce their earnings as to render all previous investigations valueless. This is equivalent to saying that inasmuch as shippers have been given the convenience and economy of the parcel post the express carriers must, on that account, be allowed to charge rates higher than would otherwise be reasonable. That is to say, the Commission is called upon to take from the shippers of the country all the benefit that they receive from the parcel post and give it to the respondents in the form of higher rates upon the remaining express business.

Whenever it has been suggested in the argument, however, that fairer rates and juster methods would bring to the express companies a volume of business which is now moving by freight the reply has been that any increase of express business would be disadvantageous because it would retard the operation of passenger trains. According to this argument the situation is, therefore, that losses of business must be followed by increased rates upon the remaining business, but that any increase or replacement of business is to be prevented.

With regard to the small-package business of the parcel post it should be noted, however, that it will still be carried upon the railroads of the country. So far as the rail carriers are concerned, it is of no consequence to them whether they furnish rail transportation for the express respondents herein or for the Post Office Department. The express companies, moreover, will not experience a gross loss of their earnings upon these small parcels, but only of the net difference between their earnings heretofore and the cost to them of furnishing terminal service upon these parcels. The Commission's conclusion is that the establishment of the parcel post is not a justification for any higher scale of rates than the one here shown to be reasonable.

The Commission's order is for two years only. That period will give abundant opportunity for a test of these rates under varying conditions amounting to a normal average. In no other way can the absolutely proper rate basis for respondents be finally determined. Respondents are also at liberty at any time to bring forward new facts as a basis for a petition for modification of this or any other order.

The rates prescribed in the order herein are those shown in the report of June 8, 1912, and those prepared subsequent to that date and submitted under the orders to show cause hereinbefore recited. Some typographical errors have been corrected and a few relatively unimportant rates between points in geographical proximity, but connected by circuitous rail routes, have been increased to allow for existing transportation difficulties.

The Commission finds:

The rules, classification, and receipt contained in Appendix A of the order hereto attached are just and reasonable regulations and practices affecting the classification, rates and tariffs, receipts, and the manner and method of presenting, marking, packing, and delivering property for transportation by express.

The present rates of the respondent express carriers between the points named in the order herein are unduly and unjustly discriminatory and unreasonable and unjust in so far as they exceed the rates in said order hereinafter prescribed.

The rates prescribed in the order herein are just, reasonable, and nondiscriminatory rates, and the order herein will require that on and after October 15, 1913, the said respondents shall cease and desist from charging, demanding, collecting, or receiving for the transportation of express matter, between the points named therein, any rate in excess of the rates therein prescribed.

The Long Island Railroad Company, during the pendency of these proceedings, carried on its own express traffic, and was not a party. No order, therefore, is made as to rates to or from points on the lines of that railroad. The consideration of these rates is left for subsequent proceedings unless its successor shall voluntarily concur in rates conforming to those named herein.

An order will be issued in accordance with the views herein expressed.

28 I. C. C.



With regard to the small-package business of the parcel post it should be noted, however, that it will still be carried upon the railroads of the country. So far as the rail carriers are concerned, it is of no consequence to them whether they furnish rail transportation for the express respondents herein or for the Post Office Department. The express companies, moreover, will not experience a gross loss of their earnings upon these small parcels, but only of the net difference between their earnings heretofore and the cost to them of furnishing terminal service upon these parcels. The Commission's conclusion is that the establishment of the parcel post is not a justification for any higher scale of rates than the one here shown to be reasonable.

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The Commission finds:

The rules, classification, and receipt contained in Appendix A of the order hereto attached are just and reasonable regulations and practices affecting the classification, rates and tariffs, receipts, and the manner and method of presenting, marking, packing, and delivering property for transportation by express.

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**An order will be issued in accordance with the views herein expressed.**

**28 I. C. C.**

No. 3836.

BOARD OF TRADE OF CARROLLTON, GA., ET AL.  
v.  
CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

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*Submitted November 17, 1911. Decided June 19, 1913.*

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Carrollton, Ga., is a local point on the Central of Georgia Railway between Newnan, where the Atlanta & West Point Railroad crosses, and Cedartown, where the Seaboard Air Line intersects that road. It is less than 70 miles from Atlanta, but no direct line connects the two. Substantially, all long-distance rates to Carrollton, as well as to Atlanta, are based upon or bear relation to the rates from Baltimore, Md., and from Louisville, Ky. Atlanta has certain rates from Baltimore and from Louisville which are applied by the carriers at Cedartown, without addition or subtraction, but at Newnan and at Carrollton the defendants make joint rates by adding certain differentials to the rates to Atlanta, which differentials are less than the local rates from Atlanta to Carrollton.

Upon a complaint which alleges that these rates to Carrollton violate sections 1, 3, and 4 of the act, and specifically brings in question the basing-point system of rate making as applied at Carrollton, *Held*:

1. That the defendants, having filed applications to be relieved from the operation of the fourth section of the act, and determination of such applications by the Commission not having been reached, this case may be decided under sections 1 and 3, reserving decision under section 4 until the Commission passes upon the appropriate applications of the carriers.
2. That the basing-point system of rate making does not now demand that joint through rates over long distances to local or noncompetitive points should be made by adding to basing-point rates either the full locals or high differentials.
3. That, in the making of joint through rates on long-distance traffic to local or noncompetitive points, the differentials above the rates to the basing points should bear some reasonable relation to the total distances involved, in order that the rates to the local points may be just and to avoid subjecting such local points to prejudice or disadvantage that is undue.
4. That, where the long-haul traffic to local stations is meager, these differentials may be higher than otherwise they would be.
5. That the present rates to Carrollton are unjust and unreasonable and subject that place to undue prejudice and disadvantage in that the defendants, in making rates on long hauls from Baltimore and related points and from Louisville and related points, add to the competitive rates to the basing point, Atlanta, differentials or arbitraries which, as component parts of joint through rates, are excessive and unreasonable when the total length of the haul is considered, and do not add such differentials or arbitraries to commercially competitive points, such as Cedartown.

6. That, in view of all the circumstances and conditions here shown, differences and discriminations in rates as between Atlanta, Cedartown, and Carrollton may be justified; but the prejudice and disadvantage to which Carrollton may be subjected should not, for the present, exceed the differentials herein prescribed as maxima.
7. That, under the circumstances of this case, no reparation should be awarded.

*Watkins & Latimer* and *C. E. Roop* for complainants.

*William A. Northcutt* and *Nelson W. Proctor* for Louisville and Nashville Railroad Company.

*R. Walton Moore* and *Merrel P. Callaway* for Central of Georgia Railway Company; Southern Railway Company; Mobile & Ohio Railroad Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; Atlanta & West Point Railroad Company; The Western Railway of Alabama; Seaboard Air Line Railway; Alabama Great Southern Railroad Company; Nashville, Chattanooga & St. Louis Railway; Atlantic Coast Line Railroad Company; Illinois Central Railroad Company; and Ocean Steamship Company of Savannah.

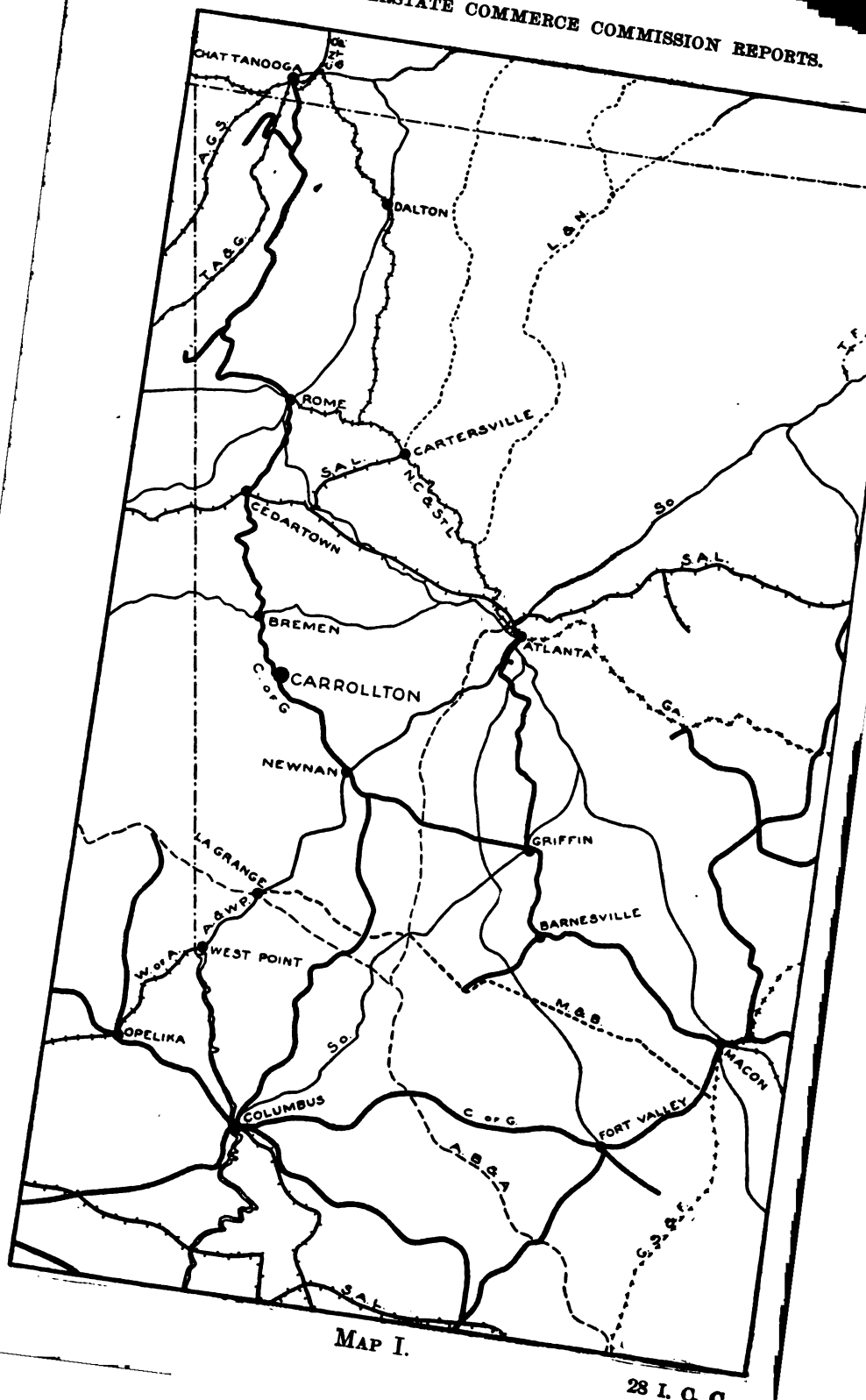
#### REPORT OF THE COMMISSION.

**CLEMENTS, Commissioner:**

This complaint was brought by the board of trade, by the municipality, and by certain corporations, firms, and individual shippers of Carrollton, Ga. The defendants named are the Central of Georgia Railway Company, hereinafter called the Central, and certain common-carrier connections of that road which have established through routes and joint rates from points in other states to points in Georgia, particularly to Carrollton.

Carrollton is in northwest Georgia, 139 miles south of Chattanooga, Tenn., and 311 miles northwest of Savannah, on the Griffin and Chattanooga branch of the Central. No direct line connects Carrollton with Atlanta, but by way of Newnan the distance is 63 miles and via Bremen 67 miles. Carrollton is a local point on the Central; the nearest places where that line is intersected by the rails of other carriers are Newnan, 24 miles southeast, where the Atlanta & West Point Railroad crosses it, and Bremen, 13 miles to the north, where the Southern Railway intersects. At Cedartown, 42 miles north of Carrollton, the Seaboard Air Line crosses the Central, and at Rome, 61 miles north of Carrollton, the Central is intersected by the Southern Railway and the Nashville, Chattanooga & St. Louis Railway. Map I illustrates the rail situation.

The complaint is that the defendants subject Carrollton and its shippers to unjust and unreasonable rates and to unjust discrimination; that the defendants give undue or unreasonable preferences to other places, which are named; and that they charge complainants more for a shorter than for a longer distance over the same line in the same direction.



MAP I.

Carrollton is the county seat of Carroll county and the complaint alleges that it has about 5,000 inhabitants; that the surrounding country is densely populated with thrifty people, 30,000 of whom live within a radius of 12 miles; and that 50,000 or 60,000 people in contiguous territory would, under normal rate conditions, trade at Carrollton; that the jobbers at Carrollton have 500 or 600 customers among the country merchants and business men in the adjoining territory, notwithstanding the discriminations set forth; that Cedartown has a population about equal in number to that of Carrollton, and though its normal trade is not so great nor its outlying districts so large or so densely populated, nevertheless the defendants without just cause give what are known as common-point rates to Cedartown and deny the same to Carrollton; that Newnan has a population about the same as that of Carrollton, and although its normal trade is not so great nor its outlying districts so large or so densely populated, nevertheless the defendants without just cause give better rates to Newnan than to Carrollton; that Carrollton pays rates which are much higher in proportion to distance than its competitors; that when it had two roads—the Central and the Chattanooga, Rome & Columbus, afterwards known as the Chattanooga, Rome & Southern—Carrollton had competition in rates, but that this competition has been destroyed since the Central purchased the competitive line; that on many commodities from Ohio and Mississippi River crossings to Carrollton, the shorter distance, the defendants charge rates as high as the rates to Newnan, the longer distance over the same line; and that commodities moving from eastern points via Savannah and other junctions, and thence through Carrollton, the shorter distance, to Cedartown, the longer distance over the same line in the same direction, take a lower rate to Cedartown than to Carrollton.

The evidence presented to the Commission, while pertinent to the allegations of the complaint as a whole, appears to be addressed particularly to the fourteenth paragraph of complainants' petition, which is as follows:

That the defendants have adopted a system of rate making in Georgia known as the "basing-point system," by which they concede to certain towns a particular rate and to other towns they charge a higher rate without regard to distance from the shipping point. This system of rate making discriminates against Carrollton and in favor of its competing markets, notwithstanding the fact that Carrollton, by reason of its size, the development of its resources, the increase of its population and wealth, together with the growth of its manufacturing and producing facilities, and increased traffic, is entitled to be rated as a basing point, if the system is to be continued by the defendants.

That the defendants have deprived Carrollton of the benefits of a basing point, though continuing to accord such benefit to the markets directly competing with it.

The rates forming the grounds of this complaint are practically from all parts of the country, but they are susceptible of very simple statement, because all rates to the points named from eastern points of origin are based upon, or are related to, the rates from Baltimore; and all rates from points on or beyond the Ohio and Mississippi rivers are based upon, or are related to, the rates from Louisville; the rates from other points being made the same as from Baltimore or Louisville, or certain differentials under or over the rates from the latter places. For comparison some of these basal rates are here stated, in cents per 100 pounds, for the classes adopted in southern territory; the rates on particular commodities, where published, bearing for the most part the usual relations thereto:

From Baltimore, Md., the rates, via water-and-rail, are:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F
To—													
Newnan.....	118	105	93	76	63	51	44	52	40	37	64	70	<i>BS</i> 76
Carrollton.....	118	105	93	76	63	51	44	52	40	37	64	70	75
Cedartown.....	98	87	78	63	52	41	34	45	37	36	55	57	72

From Baltimore, Md., the all-rail rates are:

To—													
Newnan.....	130	115	102	84	69	56	49	57	45	42	70	78	88
Carrollton.....	130	115	102	84	69	56	49	58	45	42	70	78	88
Cedartown.....	110	97	87	71	58	46	39	50	42	41	61	65	83

From Louisville, Ky., the rates are:

To—													
Cedartown.....	98	87	78	63	52	41	28	36	28	24	48	48	48
Carrollton.....	125	111	100	83	68	53	40	48	33	29	64	68	58
Newnan.....	125	111	100	83	68	53	40	48	33	29	64	68	58

From Memphis, Tenn., and from New Orleans, La., the rates are the same. They are:

To—													
Cedartown.....	94	83	74	59	48	37	24	32	24	20	44	44	40
Carrollton.....	121	107	96	79	64	49	36	44	29	25	60	64	50
Newnan.....	121	107	96	79	64	49	36	44	29	25	60	64	50

From Baltimore the rates, water-and-rail and all-rail, to Newnan and Carrollton are higher than to Cedartown by the following numbers of cents per 100 pounds:

Class.....	1	3	4	5	6	A	B	C	D	E	H	F <sup>1</sup>
Cents.....	20	18	15	13	11	10	7-8	3	1	9	13	4

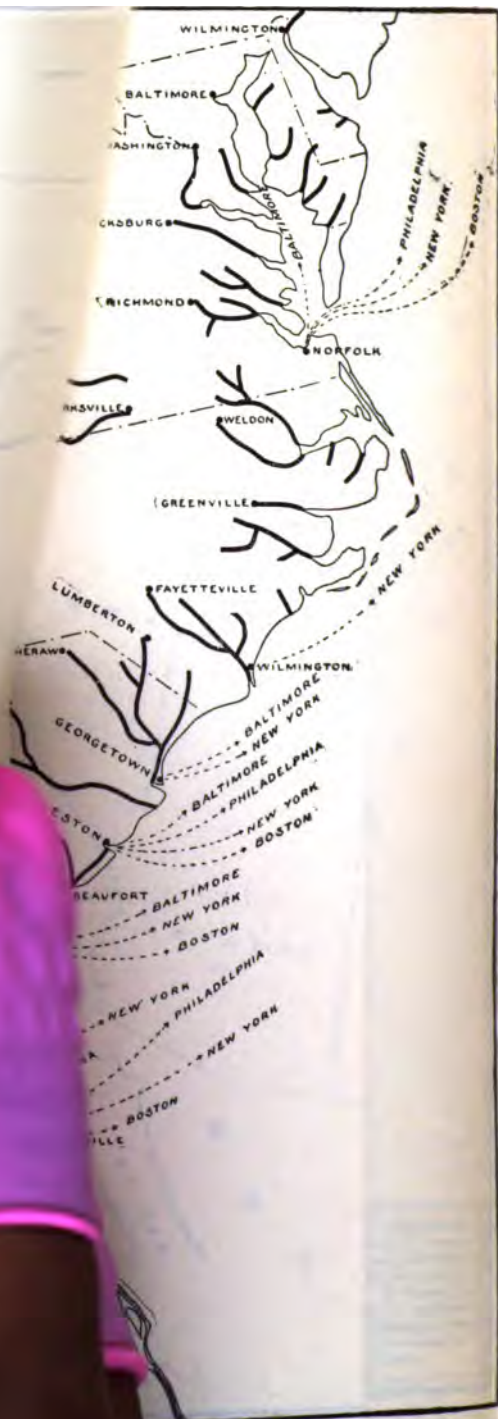
From Louisville, Memphis, and New Orleans, the rates to Carrollton and Newnan are higher than to Cedartown by the following numbers of cents per 100 pounds:

Class....	1	2	3	4	5	6	A	B	C	D	E	H	F <sup>1</sup>
Cents....	27	24	22	20	16	12	12	12	5	5	16	20	10

Per barrel.







It is shown by these tables that, with the exceptions herein noted, Carrollton has the same class rates from all points as are applied at Newnan, although Carrollton is local to the Central road and Newnan is reached by the Atlanta & West Point Railroad as well as by the Central. It also appears that there are marked discriminations in rates as between Carrollton and Cedartown which require explanation, the distance from Cedartown to Carrollton being only 42 miles.

The explanation offered by the defendants is an elaborate defense of the basing-point system of rate making which obtains in the southeastern section of the country, and particularly a defense of the system as applied to Carrollton and other places in Georgia.

The case has been presented by complainants upon the assertion that Carrollton is a jobbing or distributing point and as such entitled to rates applied by the defendants at other distributing points. It is the third section of the act, therefore, to which we must look first for guidance in the disposition of this contention, bearing in mind that the complaint is based also upon the first and the fourth sections. The Central and the other defendants have filed applications for relief from the long-and-short-haul restrictions of the fourth section of the act, and while these petitions were not heard in connection with this case, nevertheless there is no occasion to withhold this report, so far as it deals with the apparent discriminations in rates against Carrollton, or so far as it passes upon the reasonableness of the rates to Carrollton, reserving action under the fourth section until we pass upon the appropriate applications.

The defendants justify the basing-point system as applied in Georgia and neighboring states by the topography and commercial history of that country. To illustrate the water competition which they have been obliged to meet from the time the first rails were laid in the south they file as an exhibit a map prepared by the Department of Commerce and Labor, a reduced reproduction of which is herewith printed as Map II.

The gist of the defense is: That commerce in the southeastern territory is dominated by water transportation, the main points of distribution being located on the coast and at the fall lines of the navigable rivers; that these distributing points were settled trading centers before the introduction of railways; and that the basing-point system, therefore, was not a creation of the rail carriers, but an adaptation of their rates to the conditions as they found them, and as they were created by competition. A glance at Map II will indicate how different the conditions in the southeast are from those of the rest of the country, particularly with respect to the penetration of the country by navigable rivers. Better to show the section involved, a portion of this map, somewhat enlarged, is attached as Map III.

The defendants point out that the coastal plain of the Atlantic seaboard below Virginia is threaded by numerous rivers navigable from the ocean to the fall line, which generally is a little over 100 miles inland; that on the coast, at or near the mouths of these rivers, are ports that had attained commercial importance before railroads were constructed and since have grown with the country, the most noteworthy being Charleston and Savannah; that in the interior trading posts were early established at the heads of river navigation, such as Augusta, about 200 miles above the mouth of the Savannah River, and Macon, over 200 miles above the mouth of the Altamaha; that commerce, foreign and coastwise, found its main gateways to Georgia through Charleston and Savannah, going overland by pack trains from the former and by river from the latter to Augusta and thence to the far interior; and that this trade, already established, with its gateways and distributing points well defined, determined the location of the terminals and the general directions of the lines of the first railroads built in that section.

As further explained by the defendants: That from the very first the rates via rail necessarily have been adjusted in competition with rates via water carriers throughout Georgia and the south, and that the trading centers where such competition was met were basing points and had rates by rail lower than the rail carriers maintained elsewhere in that section. Without reciting in full the contentions of the carriers respecting the growth of this basing-point system of rate making, it is sufficient to add that they further contend that competition of markets and of antagonistic rail carriers extended these rates to places, such as Atlanta and Athens, where direct competition with water carriers is impossible; they claim that at Atlanta the competition of markets and of routes of transportation is real and compelling, and that Atlanta is, therefore, the natural junction point of routes from the northwest-southeast and northeast-southwest.

The competition of producing markets in the east and in the west for an outlet at Atlanta long ago resulted in a partial equalization of the rates from Louisville and from Baltimore, so far as the water-and-rail rates from the latter place are concerned. In this connection we show the rates to a few Georgia points from the markets named, giving these rates in cents per 100 pounds. From Baltimore these rates apply by water-and-rail through Norfolk, Charleston, Savannah, and other ports.

Miles.	From Baltimore to—	Class.												
		1	2	3	4	5	6	A	B	C	D	E	H	F
.....	Charleston.....	62	53	47	35	27	19	19	19	19	19	30	30	<i>Bbl.</i> 38
.....	Beaufort.....	73	60	50	35	29	21	20	20	20	20	32	33	40
.....	Savannah.....	75	63	53	37	31	23	22	22	22	22	34	34	44
.....	Brunswick.....	89	75	65	53	43	34	26	29	29	28	40	51	55
382	Jacksonville.....	95	85	76	61	51	40	32	44	32	31	49	55	62
400	Augusta.....	107	92	81	68	56	46	34	45	37	36	55	65	72
422	Hawkinsville.....	118	105	93	76	63	51	44	53	40	37	64	70	76
423	Macon.....	124	105	95	80	65	52	39	51	43	41	63	75	84
436	Milledgeville.....													
501	Griffin.....	98	87	78	63	52	41	34	45	37	36	55	57	72
537	Newnan <sup>1</sup> .....													
541	Carrollton.....													
574	Bremen.....													
605	Valdosta <sup>2</sup> .....													
618	Cordale.....													
649	Americus.....													
650	Albany.....													
622	Columbus.....													
637	La Grange.....													
630	Athens.....													
645	Atlanta.....													
653	Elberton.....													
502	Cartersville.....													
603	Cadertown.....													
619	Rome.....													
644	Dalton.....													
653	Chattanooga.....													

<sup>1</sup> Newnan: B 52.<sup>2</sup> Valdosta: C 36, D 35, and F 65.

There are other points which take higher rates.

Miles.	From Louisville to—	Class.												
		1	2	3	4	5	6	A	B	C	D	E	H	F
314	Chattanooga.....	70	60	53	44	38	29	20	29	26	21	34	39	<i>Bbl.</i> 42
353	Dalton <sup>1</sup> .....	98	87	78	63	52	41	28	36	28	24	48	48	48
394	Rome.....													
405	Cartersville.....													
411	Cadertown.....													
452	Atlanta.....													
453	Carrollton.....													
477	Newnan.....	125	111	100	83	68	53	40	48	38	29	64	68	88
485	Griffin.....													
525	Athens.....													
539	Macon.....	103	90	81	65	54	43	28	38	30	26	50	50	82
623	Augusta.....	110	96	87	70	58	46	30	40	32	28	54	54	56
571	Milledgeville.....	123	107	96	78	65	52	37	42	33	29	60	60	58
580	Hawkinsville.....													
707	Charleston.....													
727	Brunswick.....													
731	Savannah.....													
732	Beaufort.....	95	80	75	70	58	46	35	38	29	26	40	40	50
736	Port Royal.....													
774	Fernandina.....													
391	Jacksonville.....													

<sup>1</sup> Dalton: 97-84-75 first three classes.

There are other points which take higher rates.

No attempt is made in these tables to give a complete presentation of the rate situation in southeastern territory. The intention is to set forth the present rates from the east and from the west to certain points in Georgia, with a few rates to related points, such as

Chattanooga, Tenn., Charleston, S. C., and Jacksonville, Fla., in order that the rates to Carrollton may the better be understood. Regard is had primarily to the points of competition at the coast, to the cities at the fall line of the navigable rivers, and to the interior commercial centers; the tables also show the rates to some non-competitive interior points. These tables show mileages, which, for the most part, are via short lines, and do not attempt to measure the routes ordinarily taken by the traffic.

In the table showing the rates by water-and-rail from Baltimore no mileage is given to the ports for the reason that under the tariffs the rates to the various ports apply through other ports, principally through Norfolk and Savannah, and for the further reason that comparatively little traffic moves under these rates because the transportation to these ports is usually by water carrier alone and presumably at lower rates. The mileages to various interior points are in every instance made upon the constructive mileage allowed the water carriers from Baltimore to Savannah, 250 miles, plus the short-line mileage from that port. This, for the reason that to many places the mileage would be approximately the same from Charleston and greater from Norfolk, and for the further reason that, as the Central is the main defendant in this case, and as most of the traffic moves through Savannah, it appears proper to treat the matter in this way.

In the table showing the rates from Louisville the arrangement of points of destination is reversed from that shown in the Baltimore table because the direction of the movement is reversed and in order more clearly to bring out the situation. In both tables Atlanta, Rome, Cedartown, and Cartersville are printed in italics to call attention to the fact that the three last named are the only places of importance, not in the immediate vicinity of Atlanta, where the complete Atlanta adjustment of rates from the east and from the west is applied. This adjustment was reached many years ago as a result of the commercial competition between the points of origin for the trade of Atlanta and of the competition of the carriers for the traffic, and resulted in making the rates the same from Baltimore and from Louisville on the first six classes, but did not equalize the rates on the lettered classes. The reason assigned for this feature of the adjustment is that the competition between the eastern and western markets for the trade at Atlanta is in articles which move under the numbered classes, whereas few of the commodities moving under the lettered classes are produced in large quantities in the east. This equalization of the rates is further accounted for by the fact that by water-and-rail the distances from Baltimore to Atlanta and from Louisville to Atlanta were the same at that time. The prorating mileage from Louisville to Chattanooga was 336 miles,

and from Chattanooga to Atlanta 138 miles, or a total of 474 miles, and this mileage, we understand, is still used by the carriers as among themselves. At that time the ocean carriers plying between Baltimore and Savannah had a constructive or prorating mileage between those points of 179 miles, which, added to the short-line distance by one line from Savannah to Atlanta of 295 miles, made a distance of 474 miles, exactly the same as from Louisville. The constructive water mileage from Baltimore to Savannah is now 250 miles.

Looking at the table of rates from Baltimore, it is apparent that to the ports the rates are materially lower than to other places, and this clearly is for the purpose of meeting the competition of ocean carriers. The next higher rates are found along the fall lines of the rivers at points like Augusta, Macon, and Milledgeville. The Atlanta adjustment of rates has been extended through various influences to a number of points. Intermediate and noncompetitive points take differentials, or the locals, over these various rates to the ports, to the fall-line cities, or to the Atlanta basing points, whichever make the lower combinations.

The table of rates from Louisville shows rates to Atlanta and related points higher than to Charleston, Savannah, and other points on the coast, and these lower rates to the ports are undoubtedly made for the purpose of meeting, as far as possible, competition by water, and by water-and-rail at these ports. Between Atlanta points and points on the coast the rates are differentials, or locals, higher than Atlanta or the coast, whichever would make lower, the lowest intermediate adjustment from Louisville being at Athens, Augusta, and Macon, substantially along the fall line of the rivers.

Of the rates shown in both tables it may be said generally that even under the most intense competition the carriers have made no class rates that are not compensatory. Ordinarily class D in the southern classification has the lowest adjustment of rates. This class embraces grain, hay, and similar commodities, not a great amount of which moves from eastern points to the south. It happens, however, that in rates to Atlanta points from Baltimore, class A, covering tiles, cement, and the like, is lower than class D, being 34 cents per 100 pounds; and using Chattanooga, the most distant point, taking the same rates from the east as Atlanta, this rate via water-and-rail would yield a shade less than 1 cent per ton per mile. It is true that traffic can and does move under these rates through Norfolk and thence all-rail to Chattanooga, but, in any case, this rate would appear to be at least compensatory. Looking at the table of rates from Louisville, apparently the lowest revenues would accrue under the class-D rate of 26 cents to Augusta, which would yield about 8.34 mills; and under the class-D rate of 25 cents to the ports, which

would yield 7.07 mills at Charleston, 6.84 mills at Savannah, and 6.24 mills at Jacksonville, assuming that the traffic moved via the short lines.

Throughout the record the defendants attempt to assume that the reasonableness of the rates to Carrollton, in and of themselves, is not in issue; and yet they introduce evidence to support their contention that these rates are reasonable and devote nearly 30 pages of the printed briefs to this subject. In one of their briefs it is stated that "a discussion of whether we must of necessity show the rates to be reasonable is unnecessary; the legal question, however, is reserved and not waived." The sixteenth paragraph of the complaint says: "That *by reason of the premises* defendants have been and still are subjecting complainants and all other shippers similarly situated and the city of Carrollton to *unjust and unreasonable rates and charges* on interstate traffic," etc. The defendants contend that this charge of the violation of section 1, appended as it is to the other charges in the complaint, is an allegation of unreasonableness in the rates dependent entirely upon whether the rates are shown to be unduly discriminatory and prejudicial, or to be violative of the provisions of the fourth section, to such an extent as to meet with condemnation from the Commission. Whatever the force of this position may be, certainly one of the ways of showing unreasonableness under the first section is by proving that a rate is unduly high as compared with rates to other places similarly situated and, therefore, unjustly prejudicial also under the third section; and one of the ways of showing undue prejudice and disadvantage under the third section is by showing unreasonableness and excessiveness in the rate under the first section and then comparing it with the rates to similarly located places.

The defendants claim that the rates to Carrollton are just and reasonable because Carrollton is accorded the competitive rates from all points to Atlanta, plus arbitraries or differentials which are less than the local rates allowed to be charged by the Central by the Railroad Commission of Georgia. They claim that these arbitraries or differentials are substantially the lowest rates applying via any line in Georgia and that judged by this method the rates applying at Carrollton are just and reasonable. In further support of the reasonableness of the present rates to Carrollton they show the successive, and considerable, reductions made in these rates during recent years. The discrimination in rates between Cedartown and Carrollton they explain as arising through the independent act of the old East & West Railway of Alabama in the year 1898 in establishing the Atlanta adjustment of rates from the east at Cedartown. This extension of the Atlanta adjustment was opposed by the Central

and was not concurred in by that line until some time later when in order to retain what it considered its share of the business at Cedartown it established similar rates at that point. After the Seaboard Air Line absorbed the old East & West Railway of Alabama it established the Atlanta adjustment of rates from the west at Cedartown over the objection of the Central. They call attention to the fact that the Chattanooga, Rome & Southern Railroad did not become a part of the Central until 1901, and that the Chattanooga, Rome & Southern never applied the Atlanta adjustment of rates at Carrollton, although it served both Carrollton and Cedartown and concurred in the rates at Cedartown.

Apparently the concurrence of the Central in these rates was not given until some time after the rates had gone into effect via other lines over the Central's protest. Whatever justification there was for the extension of the Atlanta adjustment to Cedartown the defendants say has never existed at Carrollton. The situation at Carrollton prior to the year 1901 was that the Chattanooga, Rome & Southern Railroad had its southern terminal at that point and connected with the northern terminal of the Griffin & Carrollton branch of the Central road, the two roads forming a through line from Griffin to Chattanooga; and the purchase of the Chattanooga, Rome & Southern Railroad by the Central in 1901 did not deprive the citizens of Carrollton of the benefits of competition in rates for there had been no competition there except for traffic, and this had not found reflection in the published rates.

Whatever may be said in justification of the basing-point system, we do not think that the basing-point system itself necessarily requires that joint through rates over long distances to local or non-competitive points should now be made by adding to the basing-point rates either the full locals or high differentials. Stated in other words, for fear of misapprehension, we do not wish to be understood as passing upon the reasonableness of the local rates from the various basing points to points of ultimate destination when applied to local service; neither do we wish to be understood as condemning the application of differentials lower than such locals in the making of joint through rates beyond or intermediate to such basing points; what we do say is: that, in the making of joint through rates on long-distance traffic, to local or noncompetitive points, the differentials above the rates to the basing points should bear some reasonable relation to the total distances involved; and that where the long-haul traffic to local stations is meager these differentials may perhaps be higher than otherwise they would be. As shown before, the differentials or arbitraries applied above the Atlanta adjustment on traffic to Carrollton are 20 cents from the east and 27 cents from the west on the first class, with diminishing differentials upon the other



classes, and these differentials are lower than the locals. Using the constructive mileage of the water-carriers, the short-line distances at the present time are: From Baltimore, by water-and-rail, to Atlanta, 545 miles, and to Carrollton 561 miles; from Louisville to Atlanta, 452 miles, and to Carrollton 453 miles. Bearing in mind the competitive conditions, the geographical location of Carrollton and of the other places named, the fact that Carrollton is a local point on the Central road, the established relations of commerce and transportation in the south, and all the other factors shown in this case or brought to our attention in other cases, we think that these differentials as applied to the long hauls herein considered are too high and that the justifications urged in support of the reasonableness of the present rates to Carrollton are unsatisfactory.

The defendants claim, and our analysis of the rates seems to confirm their assertion, that their rates to the competitive points are compensatory and therefore do not burden traffic to intermediate local stations. To be thus compensatory these rates must cover at least all terminal and line charges. Nothing in this record indicates that the additional expense of handling long-haul traffic to and at Carrollton would justify the extent of the present differentials applied on traffic to that point over the rates to Atlanta and to Cedartown. Nor can the carriers fairly claim that the extent of these differentials is justified by their right to a reasonable return upon the property devoted to the public use, for Atlanta and Cedartown do not measure the longest hauls or lowest rates here considered.

Under all the circumstances and conditions shown of record, and bearing in mind the relationship and competition now existing between the eastern and western markets of production, we think that the defendants should not charge on traffic by water-and-rail from Baltimore, Md., to Carrollton, Ga., differentials over water-and-rail rates from Baltimore to Atlanta or Cedartown in excess of the following as applied to the various classes:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F <sup>1</sup>
Differential....	12	11	10	9	9	8	5	5	2	1	5	8	2

From Louisville, Ky., to Carrollton, Ga., the differentials over the class rates to Atlanta or Cedartown should not exceed:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F <sup>1</sup>
Differential....	12	11	10	9	9	8	8	8	4	4	12	15	8

With respect to the all-rail rates from Baltimore, Md., to Carrollton, Ga., we think they should not exceed the present differentials on all-rail traffic over water-and-rail traffic from Baltimore:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F <sup>1</sup>
Differential....	12	10	9	8	6	5	5	5	5	5	6	8	10

<sup>1</sup> Per barrel.

The record is fairly full concerning discriminations in the rates to Carrollton as compared with the rates to Cedartown and Newnan. Notwithstanding these disadvantages, it appears that Carrollton has grown and prospered perhaps more than either of these competing towns; and while this development of the commercial interests of Carrollton, apparently, is not due to any favoritism shown that community by the defendants, neither can the argument fairly be made that because Carrollton is thriving in business therefore the rates are not unduly prejudicial to it. As it appears to us, Carrollton is subjected to undue prejudice and unreasonable disadvantage in this respect: That the defendants, in making rates on long hauls from Louisville and related points and from Baltimore and related points to Carrollton, have added to the competitive rates to the basing point, Atlanta, differentials or arbitraries which, as component parts of joint through rates, are excessive and unreasonable when the total length of the haul is considered and have not added such differentials or arbitraries to commercially competitive points, such as Cedartown. In saying this we bear in mind the influences under which the rates to the basing points, Atlanta, Cedartown, and the like, were made, and we also bear in mind the facts that Carrollton is not upon a navigable stream and is served at present by only one carrier. We further recognize that some difference, some discrimination in these rates over the rates to Cedartown and Atlanta may be justified under all the circumstances and conditions, but we find that the discriminations and disadvantages to which Carrollton has been subjected are undue and unreasonable in and to the extent that the arbitraries over the rates to Atlanta, heretofore applied on traffic to Carrollton, exceed the arbitraries or differentials herein named for the future.

It will be noted that the reductions here made are greater in the differentials from the west than in those from the east. No sufficient reason has been given or occurs to us for the present differences in the numbered classes between the rates from Baltimore and from Louisville to Carrollton. While we are not justified in finding that Carrollton is entitled to the same rates on the numbered classes as are now in force at Atlanta and at Cedartown, nothing in this record persuades us that on these classes there should be any greater differences between the rates from Baltimore and from Louisville to Carrollton than obtain at Atlanta or at Cedartown. To this extent we think Carrollton is entitled to the benefits of the Atlanta adjustment; that is, to an equalization in the rates on the numbered classes from the east and from the west.

In reaching these conclusions we bear in mind that the third section of the act forbids the giving of undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or

locality; and while this section does not carry the phrase embodied in section 2, "under substantially similar circumstances and conditions," which is the same as that eliminated from section 4 by the amendment of June 18, 1910; nevertheless, it contains words of wider scope, "in any respect whatsoever;" and, as a matter of practical application the thought, if not the words, "under substantially similar circumstances and conditions," must be present to the mind in considering under section 3 what preferences or advantages are due or reasonable, or are undue or unreasonable.

Traffic to Carrollton does not move under all the circumstances and conditions of competition which apply even at Newnan, to say nothing of Cedartown or Atlanta; nevertheless the natural disadvantages of Carrollton and its lack of facilities for competitive transportation should not be magnified unduly and should not be allowed to obscure its right to rates that are reasonable and just, both in themselves and as compared with rates applied at other neighboring points. And the Commission, in determining what these rates shall be, must not and does not forget that these rates must be reasonable and yield just compensation for the services of the carriers.

Taking into account all the circumstances and conditions shown in this record, bearing in mind particularly the competitive forces which have affected and still influence the rate and commercial conditions of the south, and having full regard to the fact that the complainants alleged and proved violations of sections 1 and 3, we are unable to find that Carrollton is entitled to rates from the east or from the west upon an equal basis with Cedartown or Atlanta. No opinion is herein expressed regarding what we may hereafter hold concerning the rates to Carrollton under the fourth section applications before noted. Looking at the rates from the east and from the west now applied by the defendants on traffic destined to Carrollton, our conclusion is, and we therefore find, that they are unjust and unreasonable under section 1, in and to the extent that they exceed the rates herein prescribed; and looking at these rates as compared with the rates to other places in the immediate vicinity with which Carrollton competes as a distributing center, our conclusion is, and we therefore find, under section 3, that the rates to Atlanta and Cedartown are unduly preferential to such other places and subject Carrollton to undue prejudice and disadvantage in and to the extent that they exceed the rates herein prescribed.

For the future the defendants will be required to establish and maintain rates from Baltimore, Md., to Carrollton, Ga., via water-and-rail, which shall not exceed the following numbers of cents per 100 pounds, or per barrel, for the classes named: First class, 110; second, 98; third, 88; fourth, 72; fifth, 61; sixth, 49; A, 39; B, 50;

C, 39; D, 37; E, 60; H, 65; F, 74 per barrel. For the future the defendants herein will be required to establish and maintain rates from Baltimore, Md., to Carrollton, Ga., via all-rail, not higher than the following figures in cents per 100 pounds, or per barrel, for the classes named: First class, 122; second, 108; third, 97; fourth, 80; fifth, 67; sixth, 54; A, 44; B, 55; C, 44; D, 42; E, 66; H, 73; F, 84 per barrel.

For the future the defendants herein will be required to establish and maintain rates from Louisville, Ky., to Carrollton, Ga., which shall not exceed the following numbers of cents per 100 pounds, or per barrel, for the classes named: First class, 110; second, 98; third, 88; fourth, 72; fifth, 61; sixth, 49; A, 36; B, 44; C, 32; D, 28; E, 60; H, 63; F, 56 per barrel.

It appears that the rates from Boston, Providence, New York, Philadelphia, interior eastern, New England and Canadian points, and from points related in rates to these named points, bear definitely adjusted relationships to the rates by all-rail and by water-and-rail from Baltimore to Atlanta and to Cedartown. It also appears that the rates from all Ohio and Mississippi River crossings, and from points taking the same rates as these crossings, or rates related thereto, bear definitely adjusted relationships to the rates from Louisville to Atlanta and to Cedartown. The carriers will be expected to adjust the rates to Carrollton from all points in the east that now are made with relation to the rates from Baltimore, and from all points in the west that now are made with relation to the rates from Louisville, in accordance with the intent and meaning of this report. The rates from Baltimore and from Louisville are taken herein as practically illustrative of the entire rate situation with respect to Atlanta, Cedartown, and Carrollton and there is nothing in the present record to suggest the propriety of any change in these adjustments.

The record discloses some rates to Carrollton on specific commodities which are unreasonable and unduly prejudicial, because the differences, differentials, arbitraries, or specifics above the rates to the basing points are excessive on the long-haul traffic herein considered. We think from what has heretofore been said that our attitude as to the rates to Carrollton should be sufficiently plain so that the defendants can adjust the rates upon particular commodities with reference to similar rates applying to Atlanta and Cedartown. However, for fear of misapprehension, and as a guide to the defendants in making proper adjustments of the rates on other commodities, we will set forth certain commodity rates to Carrollton, which upon careful examination we believe to be unjust and unreasonable in and of themselves and unduly discriminatory and prejudicial to that place as compared with the rates on similar articles to Atlanta

and Cedartown. From Louisville, Ky., to Atlanta and Cedartown the rate on agricultural cultivating implements, carload minimum weight 20,000 pounds, is 35 cents per 100 pounds; upon the same commodity the rate to Carrollton is now 47 cents; we think the rate to Carrollton for the future should not exceed 43 cents from Louisville and 39 cents from Memphis and New Orleans. On canned goods in tin cans the present rates from Louisville to Atlanta and Cedartown are 41 cents in carloads and 57 cents in less than carloads; the present rates on these commodities to Carrollton are 57 cents and 79 cents; for the future the rates from Louisville to Carrollton on canned goods should not exceed 50 cents in carloads and 67 cents in less than carloads, and from Memphis and New Orleans the rates should not exceed 46 cents carloads and 63 cents less than carloads. Complainants ask for lower rates from western river crossings upon fertilizers, but the adjustment already made by the carriers appears to be substantially correct, and we are not disposed to disturb it at this time. Flour in sacks, any quantity, from Louisville to Atlanta and Cedartown moves under a rate of 24 cents, whereas the rate to Carrollton is 29 cents; for the future the rate on flour in sacks, any quantity, from Louisville to Carrollton should not exceed 28 cents per 100 pounds, or 24 cents per 100 pounds, any quantity, from Memphis and New Orleans. From Louisville to Atlanta and Cedartown the rates on special iron are, carloads 31 cents, less than carloads 34 cents; from the same point to Carrollton the rates are 39 cents and 42 cents; for the future the rates on special iron to Carrollton should not exceed 36 cents per 100 pounds in carloads and 39 cents in less than carloads, and from Memphis and New Orleans these rates should not exceed 32 cents in carloads and 35 cents in less than carloads. From Louisville to Atlanta the rate on horses and mules, in carloads, is \$95 per car, and to Cedartown \$93 per car; the rate on the same commodity from Louisville to Carrollton is \$106.25 per car. This rate we are not disposed to disturb, nor do we think the rates from Memphis and New Orleans should be reduced from \$98.25 and \$101.25 per car respectively. From Memphis and New Orleans the rates on sugar in barrels or hogsheads to Atlanta and Cedartown are 23 cents in carloads and 26 cents in less than carloads; the present rates to Carrollton on this commodity are 38 cents carloads and 41 cents less than carloads; for the future the rates on sugar from Memphis and New Orleans to Carrollton should not exceed 31 cents in carloads and 34 cents in less than carloads. From Memphis and New Orleans the present rate on sirup and molasses in wood to Atlanta and Cedartown is 28 cents any quantity and to Carrollton the rate on this same commodity is 37 cents; for the future from Memphis and New Orleans

the rate on sirup and molasses in wood to Carrollton should not exceed 34 cents any quantity. No change in the present carload minimum weights should be made.

Certain differences between the commodity rates from Baltimore to Newnan and Carrollton were pointed out by the carriers and defended upon the ground that these rates had been applied first by the Atlanta & West Point Railroad at Newnan, and that the Central had not felt it necessary to make the same rates at Carrollton. These follow:

From Baltimore—	To Newnan.		To Carrollton.	
	C. L.	L. C. L.	C. L.	L. C. L.
Bagging, rated as class A, southern classification .....	\$0.30	\$0.30	\$0.42	\$0.42
Cotton ties, c. l. minimum 24,000 pounds .....	.24	.44	.20	.45
Canned goods .....	.41	{ .57 } .....	{ .73 } .....	{ .68 } .....
Coffee, green or roasted, in double sacks .....	.52	.63	Class rates.	
Sugar, in barrels, half barrels, hogsheads, or double sacks, or in cartons, or sacks, packed in boxes, c. l. minimum weight 24,000 pounds.	.30	.33	.....	.43
Cement, in barrels or sacks, per ton, 2,000 pounds, minimum 40,000 pounds .....	4.80	.....	.....	.....

As will be seen from an examination of the above table, however the adjustment to Newnan arose, the rates to Carrollton appear to have been left too high as compared with the specific commodity rates to Newnan and with the class and commodity rates to Atlanta. An examination of these specific commodity rates with similar rates from Baltimore to Atlanta gives the impression that the Atlanta & West Point road, with respect to these commodities at least, has placed Newnan upon the Atlanta basis. We recognize the difficulties of the situation with respect to Carrollton, and after taking into consideration all the circumstances and conditions surrounding the transportation from Baltimore, Md., to Carrollton, Ga., by water-and-rail, our conclusions are, and we therefore find, that rates on these commodities for the future should not exceed the following in cents per 100 pounds:

Bagging, any quantity .....	\$0.35
Canned goods:	
In carloads .....	.50
In less than carloads .....	.62
Sugar, any quantity .....	.40
Cement, per net ton, in carloads .....	5.00

Carload minima to be maintained as at present.

We do not think the fifth-class rate on coffee to Carrollton, which under our order will be 61 cents per 100 pounds, in any quantity, is excessive, and therefore make no order concerning that. Nor do we think the rates on cotton ties need be changed at present. The

defendants will be expected to adjust their other commodity rates substantially in accordance with those herein found to be reasonable.

The complaint asks reparation. Following the principles stated in the *Anadarko case*, 20 I. C. C., 43, no reparation will be ordered.

Wherever, in this report, we have used the term "water-and-rail" and the facts of transportation would seem to require more particular description, it is to be understood that by the usage of the carriers, as shown by their tariffs, the terms "water-and-rail," "rail-and-water," and "rail,-water-and-rail" are ordinarily interchangeable and synonymous.

An order in accord herewith will be issued.

28 I. C. C.

No. 5026.

MAYOR AND CITY COUNCIL OF VIENNA, GA.,

v.

GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY  
ET AL.

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*Submitted May 17, 1913. Decided June 16, 1913.*

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The present adjustment of rates from the Ohio River crossings, from Birmingham, Ala., and from Knoxville, Tenn., found to be unjustly discriminatory to Vienna, Ga., and unduly preferential to Cordele, Ga.

*Snodgrass & MacIntyre* for complainants.

*N. W. Proctor* for Louisville & Nashville Railroad Company.

*R. Walton Moore* and *C. D. Drayton* for Georgia Southern & Florida Railway Company, Seaboard Air Line Railway, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Mobile & Ohio Railroad Company, Southern Railway Company, and Illinois Central Railroad Company.

#### REPORT OF THE COMMISSIONER.

**CLEMENTS, Commissioner:**

This complaint alleges unjust discrimination against Vienna, Ga., and undue preference in favor of Cordele, Albany, Americus, and Dawson, Ga., in the rates of the defendants from points in the north and west. The rates to the complaining city are not challenged as unreasonably high and the testimony has reference principally to competition with Cordele. The complainants further allege that it is impossible to successfully conduct a wholesale business at Vienna under the present adjustment of rates.

Vienna is in southwest Georgia and is served by the lines of the Georgia Southern & Florida and Atlanta, Birmingham & Atlantic Railroads, which meet at that point and practically parallel each other to Cordele, a distance of 9 and 10 miles via the respective lines. The termini of the Georgia Southern & Florida are Macon, 56 miles north of Vienna, and Jacksonville and Palatka, Fla., the former 206 miles from Vienna. The main line of the Atlanta, Birmingham & Atlantic extends from Birmingham, Ala., and Atlanta, Ga., to Brunswick, Ga. Vienna is 162 miles from Atlanta, 281 miles from Birmingham, and 173 miles from Brunswick. These roads intersect



at Cordele, but there is physical connection between them at Vienna. On traffic via Birmingham, Atlanta, or Macon, Vienna is intermediate to Cordele. Vienna's population in 1910 was 1,564, and about 10,000 bales of cotton are brought there annually by wagon from the surrounding country. Located there are an oil mill, a planing mill, and two guano factories.

From the east Vienna is accorded the Cordele rates.

From the Ohio River crossings, Birmingham, Ala., and Knoxville, Tenn., the same rates apply to Cordele, Albany, Americus, and Dawson. The class rates per 100 pounds to those points and to Vienna are as follows:

From—	1	2	3	4	5	6	A	B	C	D	E	H	F <sup>1</sup>
Cincinnati, Louisville, Evansville, Paducah, and Cairo to—													
Vienna.....	\$1.43	\$1.25	\$1.12	\$0.91	\$0.76	\$0.61	\$0.46	\$0.51	\$0.38½	\$0.34	\$0.71	\$0.73	\$0.69½
Cordele.....	1.23	1.07	.96	.78	.66	.52	.37	.42	.33	.29	.60	.60	.58
	.20	.18	.16	.13	.11	.09	.09	.09	.05½	.05	.11	.13	.11½
Birmingham to—													
Vienna.....	.96	.89	.70	.58	.52	.42	.38	.37	.22½	.21	.51	.58	.45
Cordele.....	.85	.73	.65	.53	.42	.33	.29	.28	.17	.16	.40	.45	.34
	.11	.16	.05	.05	.10	.09	.09	.09	.05½	.05	.11	.13	.11
Knoxville to—													
Vienna.....	1.09	.96	.87	.70	.58	.46	.38	.40	.25½	.24	.54	.58	.51½
Cordele.....	.91	.79	.71	.57	.47	.37	.29	.31	.20	.19	.43	.45	.40
	.18	.17	.16	.13	.11	.09	.09	.09	.05½	.05	.11	.13	.11½

<sup>1</sup> Per barrel.

Rates to Vienna from the Ohio River crossings are made by combination on Macon or Cordele, whichever are lower; classes 6 and A are based on the former; the others on the latter point. This is in accordance with the system commonly in use in the southeast of making rates to local or noncompetitive points certain differentials or locals higher than rates to common or competitive points. The second factors in the Vienna rates are the rates prescribed by the Georgia commission from Macon and Cordele to Vienna.

The rates from Birmingham are based on the Atlanta, Birmingham & Atlantic's continuous mileage scale or on combination on Cordele or Macon, whichever are lowest. Classes 1 to 5 are based on the mileage scale, 6 and A on Macon, and the others on Cordele. From Knoxville classes 1, 2, 6, and A are based on Macon; the remainder on Cordele.

The testimony on the applications of the carriers defendant for relief from the provisions of the fourth section of the amended act to regulate commerce in connection with existing deviations from the long-and-short-haul rule was stipulated into this case. The record in docket No. 4345, *City of Montezuma, Ga., v. C. of G. Ry. Co.*, now before the Commission, was also stipulated herein.

The Atlanta, Birmingham & Atlantic made a general denial of the unjust discrimination alleged, but was not represented at the hearing, nor was brief submitted in its behalf. Witnesses for that carrier, which has been in the hands of receivers since January 1, 1909, appeared at the fourth-section hearings and testified with reference to its local interstate rates. It was there stated that it was the intention of the Atlanta, Birmingham & Atlantic to eliminate in those rates practically all deviations from the long-and-short-haul clause, the exceptions eastbound being rates from Birmingham to certain points on its circuitous route to Atlanta, and rates to Brunswick, which, owing to water competition, are lower than to intermediate points. The general basis proposed from Birmingham is its interstate mileage scale, observing as maxima Atlanta rates to stations Abbottsford, Ga., to Manchester, Ga., inclusive; Cordele rates to points east of Manchester to Cordele; Fitzgerald rates to points east of Cordele to Fitzgerald; and the latter rates or combination on Brunswick, whichever are lower, to stations between Fitzgerald and Brunswick. From this it is evident that it is the intention of that carrier to eliminate the discrimination complained of in the Birmingham rates; and its desire to eliminate long-and-short-haul deviations, with the exceptions noted, in connection with all interstate traffic, its traffic manager expressing willingness to accept to local points the divisions at present received to the next more distant common or competitive point. This would have the effect of dividing the line into blocks, or groups, thus securing to local or noncompetitive points the benefit of competition to the more distant common point. This carrier was responsible for the reduction in the Vienna rates from the east to the Cordele basis.

The other defendants seek to justify the discrimination in favor of Cordele on the ground that the existing rates to that point were established or forced by the action of the old Savannah, Americus & Montgomery Railroad (afterwards the Georgia & Alabama Railroad and now a part of the Seaboard Air Line Railway), following the decision of the Commission in the case of *Hill & Bro. v. N. O. & St. L. Ry.*, 6 I. C. C., 343, in which was condemned the application of higher rates from Nashville, Tenn., to Cordele than to Americus and Albany, Ga. It is stated that there was opposition to the reductions proposed, but that the Savannah, Americus & Montgomery insisted upon establishing the Americus basis and agreed to accept on Cordele traffic the proportions it received to Americus; that the Georgia Southern & Florida met those reductions, and when the Atlanta, Birmingham & Atlantic was constructed it published the rates in effect via the older lines. In other words, the contention is that the carriers serving Vienna were not in any way responsible for

the lower scale applying to Cordele, and that the action of the Savannah, Americus & Montgomery created compelling competition at that point which did not then, and does not now, exist at Vienna. It is also argued that the construction of the Atlanta, Birmingham & Atlantic did not shorten the distance from Cincinnati and Louisville to Vienna, the short line still being via Atlanta and Macon.

The distance from Atlanta to Vienna via the two-line haul of the Southern and Georgia Southern & Florida railways is 18 miles less than via the Atlanta, Birmingham & Atlantic direct. The short line from Cairo is via Birmingham, and from the latter point the line of the A., B. & A. is slightly longer than routes formed by three or more carriers.

The basing or common-point system of rate making in the south-east has been fully discussed in previous cases. *Board of Trade of Dawson v. C. of Ga. R. R.*, 8 I. C. C., 142; *Mayor & Council of Tifton v. L. & N. R. R. Co.*, 9 I. C. C., 160.

In *Chamber of Commerce of Ashburn, Ga., v. G. S. & F. Ry. Co.*, 28 I. C. C., 140, the Commission held that rates from eastern cities, Ohio and Mississippi River crossings and the west to Ashburn should not exceed those to Tifton. Ashburn is located at the intersection of the Georgia Southern & Florida and Gulf Line railways, 20 miles from either Cordele or Tifton, and the rates thereto were made by the addition of arbitraries to the Macon, Cordele or Jacksonville rates. The lowest combination resulted in rates higher than to Cordele and Tifton as follows:

Class ....	1	2	3	4	5	6	A	B	C	D	E	F
Cordele..	25	23	20	18	15	12	12	11	7	6	15	14
Tifton...	5	6	6	6	6	5	5	8	5	4	5	10

The present rates to Ashburn and Tifton from Ohio River crossings are:

Rates ...	143	124	110	90	74	59	44	45	35	31	70	62
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In disposing of that case the Commission said:

Defendants allege that the rates to Cordele, Tifton, Fitzgerald, Albany, and other basing points which enjoy lower rates than are accorded to Ashburn, have been depressed by competitive forces beyond the control of the carriers that serve Ashburn, or by decisions of this Commission. They contend that the Georgia Southern & Florida had a legal right to meet the rates that were established at Cordele and Tifton by other carriers, and which it could not control, without reducing its reasonable rates to Ashburn where the circumstances and conditions are dissimilar to those at Cordele and Tifton. The answer to this is that the lines which originally established some of these lower rates did not and do not control the rates at any of these basing points except by concurrence and cooperation of their connections. The lines which reach Ashburn and the lines which reach the other basing points join with each other in joint through rates to those several points. And, as will later appear, the Georgia Southern & Florida was a party to the establishment of the lower rates to Tifton.

The contention stated is presented in this case also and might be answered in the same vein, for while it is argued that the old Savannah, Americus & Montgomery was responsible for the lower rates to Cordele, that carrier did not reach any of the crossings on the Ohio or Mississippi and could not establish rates therefrom to Cordele without the concurrence of the trunk lines which participate in Vienna traffic. None of the lines serving Vienna reaches crossings on either of the two rivers, but in that respect Cordele's situation is not different; the lines reaching both places connect with all of the principal trunk lines serving the southeast. While it is true that the construction of the Atlanta, Birmingham & Atlantic did not shorten the distance from any of the Ohio or Mississippi River gateways, either Vienna or Cordele may reach Atlanta or Birmingham, through which the great majority of the traffic from the Ohio River crossings moves, by a one-line haul instead of over routes composed of two or three carriers, and may therefore reach the Ohio or the Mississippi River by a two-line haul.

Upon the whole record we find that the present rate adjustment from the Ohio River crossings, Birmingham and Knoxville, is unjustly discriminatory against Vienna and unduly preferential to Cordele, and that the defendants should be required to establish from those points rates to the one not higher than to the other. An order will be entered accordingly.

No complaint is made because of deviations from the long-and-short-haul provision of the fourth section of the amended act to regulate commerce, and the order herein is without prejudice to any action the Commission may take upon the defendants' application for relief.

from the west and the greater part of this consists of carload shipments of hay, grain, grain products, meat, and packing-house products, which are in classes B, C, D, and F, the rates thereon being made on Atlanta combination. It is largely on the rates on these commodities that this complaint is based, they being necessities of life and constituting a large part of the produce handled by wholesale dealers at distributing points.

The class rates from the various crossings to the three points named are as follows:

*Class rates in cents per 100 pounds.*

	1	2	3	4	5	6	A	B	C	D	E	H	F <sup>1</sup>
To Atlanta from—													
Cincinnati.....	98	87	78	63	52	41	28	36	28	24	48	48	48
Louisville.....													
Evansville.....													
Paducah.....													
Cairo.....	94	83	74	59	48	37	24	32	24	20	44	44	40
Memphis.....													
New Orleans.....													
Vicksburg.....													
To Lagrange from—													
Cincinnati.....	134	119	107	88	72	56	42	51	37½	33	68	73	67
Louisville.....													
Evansville.....													
Paducah.....													
Cairo.....	130	115	103	84	68	52	38	47	33½	29	64	60	59
Memphis.....													
New Orleans.....													
Vicksburg.....													
To Opelika from—													
Cincinnati.....	113	100	91	73	61	49	32	40	32	28	54	54	56
Louisville.....													
Evansville.....													
Paducah.....													
Cairo.....	103	90	81	65	54	43	28	38	30	26	50	50	52
Memphis.....													
New Orleans.....													
Vicksburg.....													

<sup>1</sup> Per barrel.

The class rates from the Ohio and Mississippi River crossings to Lagrange are therefore higher than to Atlanta and Opelika by the following amounts:

	1	2	3	4	5	6	A	B	C	D	E	H	F
Atlanta.....	36	32	29	25	20	15	14	15	9½	9	20	25	19
Opelika:													
From Cincinnati.....	21	19	16	15	11	7	10	11	5½	5	14	19	11
From other crossings.....	31	29	26	23	18	13	14	13	7½	7	18	23	15

The basis of rate making to Lagrange is that commonly in use to noncompetitive points in the southeast; that is, the lowest combination on near-by competitive points. In the case of Lagrange the lowest combinations are generally on Atlanta, the exceptions being classes 2, 4, A, and H, which base on Opelika.

Under the relative adjustment in existence since the Cooley award, rates from all of the Ohio River crossings to Atlanta and Lagrange

are equalized as between crossings, and New Orleans and Memphis take rates 4 cents per 100 pounds lower on all classes. The adjustment to Opelika is somewhat similar, New Orleans and Memphis having the 4-cent differential under Cairo, but Cincinnati taking rates higher than the other Ohio River crossings by the following differentials:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F <sup>1</sup>
Differential..	10	10	10	8	7	6	5	2	2	2	4	4	4

The combinations on which Lagrange rates from Memphis and New Orleans are made are shown below:

	1	2	3	4	5	6	A	B	C	D	E	H	F <sup>1</sup>
From Memphis or New Orleans to—													
Atlanta.....	94	.....	74	.....	48	37	.....	32	24	20	44	.....	40
Opelika.....	86	.....	77	61	.....	24	.....	.....	.....	.....	.....	46	.....
To Lagrange from—													
Atlanta.....	36	.....	29	.....	20	15	.....	15	9½	9	20	.....	19
Opelika.....	29	.....	28	23	.....	14	.....	.....	.....	.....	.....	23	.....
Through rate.....	130	115	103	84	68	52	38	47	33½	29	64	69	59

<sup>1</sup> Per barrel.

A similar statement from the Ohio River crossings would be made by the addition of 4 cents per 100 pounds (8 cents per barrel on class F) to the rates to the basing points and consequently to the totals.

To illustrate the disadvantages under which Lagrange is laboring as compared with Atlanta and Opelika, it was testified by a witness for the only wholesale establishment in Lagrange that his company usually ships 150 barrels of flour in a car, and from any one of the Ohio River crossings, New Orleans, or Memphis it pays on such a car \$28.50 more freight than its Atlanta competitors. The carrier earnings on a similar car to Lagrange from Memphis, New Orleans, or the lower Ohio River crossings are \$22.50, and from Cincinnati \$16.50 greater than to Opelika. Flour takes class F, and the rates to Lagrange are made in the usual manner, by the addition to the Atlanta rates of the full local of 19 cents per barrel.

It is pointed out by defendants that Lagrange secures the benefit of commodity rates to Atlanta, Opelika, and Montgomery, as through rates to it are made by combination of such commodity rates and the local class rates beyond; and that the relative adjustments between crossings are maintained in these commodity rates on all articles on which there is competition from or through the various crossings. On sugar from New Orleans and Memphis, Atlanta and Opelika are accorded a commodity rate of 23 cents, while Lagrange has to pay in addition the local class rate of 15 cents from Atlanta.

Opelika is the only point between Atlanta and Montgomery which through rates from the crossings are not made on a  
28 I. C. C.

from the west and the greater part of this consists of carload shipments of hay, grain, grain products, meat, and packing-house products, which are in classes B, C, D, and F, the rates thereon being made on Atlanta combination. It is largely on the rates on these commodities that this complaint is based, they being necessities of life and constituting a large part of the produce handled by wholesale dealers at distributing points.

The class rates from the various crossings to the three points named are as follows:

*Class rates in cents per 100 pounds.*

	1	2	3	4	5	6	A	B	C	D	E	H	F <sup>1</sup>
To Atlanta from—													
Cincinnati.....	98	87	78	63	52	41	28	36	28	24	48	48	48
Louisville.....													
Evansville.....													
Paducah.....													
Cairo.....	94	83	74	59	48	37	24	32	24	20	44	44	40
Memphis.....													
New Orleans.....													
Vicksburg.....													
To Lagrange from—													
Cincinnati.....	134	119	107	88	72	56	42	51	37½	33	68	73	67
Louisville.....													
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Louisville.....													
Evansville.....													
Paducah.....													
Cairo.....	103	90	81	65	54	43	28	38	30	26	50	50	52
Memphis.....													
New Orleans.....													
Vicksburg.....													

<sup>1</sup> Per barrel.

The class rates from the Ohio and Mississippi River crossings to Lagrange are therefore higher than to Atlanta and Opelika by the following amounts:

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Atlanta.....	36	32	29	25	20	15	14	15	9½	9	20	25	19
Opelika:													
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The basis of rate making to Lagrange is that commonly in use to noncompetitive points in the southeast; that is, the lowest combination on near-by competitive points. In the case of Lagrange the lowest combinations are generally on Atlanta, the exceptions being classes 2, 4, A, and H, which base on Opelika.

Under the relative adjustment in existence since the Cooley award, rates from all of the Ohio River crossings to Atlanta and Lagrange

are equalized as between crossings, and New Orleans and Memphis take rates 4 cents per 100 pounds lower on all classes. The adjustment to Opelika is somewhat similar, New Orleans and Memphis having the 4-cent differential under Cairo, but Cincinnati taking rates higher than the other Ohio River crossings by the following differentials:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F
Differential..	10	10	10	8	7	6	5	2	2	2	4	4	4

The combinations on which Lagrange rates from Memphis and New Orleans are made are shown below:

	1	2	3	4	5	6	A	B	C	D	E	H	F <sup>1</sup>
From Memphis or New Orleans to—													
Atlanta.....	94	.....	74	.....	48	37	.....	32	24	20	44	.....	40
Opelika.....	86	.....	77	61	.....	24	.....	.....	.....	.....	46	.....	.....
To Lagrange from—													
Atlanta.....	36	.....	29	.....	20	15	.....	15	9½	9	20	.....	19
Opelika.....	.....	29	26	23	.....	14	.....	.....	.....	.....	23	.....	.....
Through rate.....	130	115	103	84	68	52	38	47	33½	29	64	69	59

<sup>1</sup> Per barrel.

A similar statement from the Ohio River crossings would be made by the addition of 4 cents per 100 pounds (8 cents per barrel on class F) to the rates to the basing points and consequently to the totals.

To illustrate the disadvantages under which Lagrange is laboring as compared with Atlanta and Opelika, it was testified by a witness for the only wholesale establishment in Lagrange that his company usually ships 150 barrels of flour in a car, and from any one of the Ohio River crossings, New Orleans, or Memphis it pays on such a car \$28.50 more freight than its Atlanta competitors. The carrier earnings on a similar car to Lagrange from Memphis, New Orleans, or the lower Ohio River crossings are \$22.50, and from Cincinnati \$16.50 greater than to Opelika. Flour takes class F, and the rates to Lagrange are made in the usual manner, by the addition to the Atlanta rates of the full local of 19 cents per barrel.

It is pointed out by defendants that Lagrange secures the benefit of commodity rates to Atlanta, Opelika, and Montgomery, as through rates to it are made by combination of such commodity rates and the local class rates beyond; and that the relative adjustments between crossings are maintained in these commodity rates on all articles on which there is competition from or through the various crossings. On sugar from New Orleans and Memphis, Atlanta and Opelika are accorded a commodity rate of 23 cents, while Lagrange has to pay in addition the local class rate of 15 cents from Atlanta.

Opelika is the only point between Atlanta and Montgomery to which through rates from the crossings are not made on combina-  
28 I. C. C.



tion; it is accorded the Columbus, Ga., rates. With the exception of Gabbettville, 9 miles from Lagrange, which is 1 cent higher on several classes, Lagrange is the highest rated point between Atlanta and Montgomery.

On the Atlanta, Birmingham & Atlantic several points south of and more distant than Lagrange have lower rates. Montezuma, Ga., 93 miles beyond Lagrange and served also by the Central of Georgia, has a rate of \$1.28, first class, from the Ohio River, and Cordele, 124 miles beyond and served also by the Georgia Southern & Florida and Seaboard Air Line railways, a first-class rate of \$1.23. Complaints from Montezuma and Vienna, Ga., the latter 9 miles north of Cordele and taking a first-class rate of \$1.43 from the Ohio River crossings, of unjust discrimination in favor of Cordele and other contiguous points, have been heard and are now submitted.

The answer of the Atlanta, Birmingham & Atlantic and its receivers contained the following:

These defendants, without undertaking to admit or to deny the allegations of the complaint, show to the Commission that previous to the filing of this complaint these defendants undertook to adjust rates from Ohio and Mississippi River crossings in the west to Lagrange, Ga., on the Atlanta basis; but owing to the fact that its rails do not extend to the western gateways and to the further fact that the connecting lines were unwilling to participate on such basis, such adjustment could not be accomplished.

Prior to the extension of its line to Lagrange the Atlanta, Birmingham & Atlantic entered into a contract to give to that point Atlanta rates in consideration of certain rights of way, etc., but it appears from the testimony in the fourth section hearings that those rates from the east were established not only to Lagrange but to Vienna and Manchester, Ga., and the Opelika rates to Roanoke, Ala., the object being to establish points of distribution with rates as favorable as those applying to contiguous points on other lines in order to secure a portion of the through traffic to this section.

It further appears from the fourth section hearings that it is the desire of the Atlanta, Birmingham & Atlantic to eliminate as largely as possible violations of the fourth section in connection with its through interstate traffic, and its intention to do so on its local interstate traffic, the exceptions being on traffic to and from Brunswick, Ga., the rates to which are affected by water competition, and between Birmingham and Atlanta, its line being very circuitous. This would in effect block or group the points on this line, which is willing to accept to local points the divisions accruing to more distant common or basing points.

The other defendants denied the allegations both of inherent unreasonableness and unjust discrimination, and presented numerous exhibits comparing the rates to Lagrange with those to other points

in the same section. They contend that the Opelika rates are unusually and abnormally low and should not be used as a measure of reasonableness under section 1; and seek to justify the discrimination in rates as not being unjust or undue by reciting the history of the adjustments to all of the points involved, alleging that competitive conditions at Atlanta and Opelika are substantially dissimilar to those at Lagrange; that the carriers serving Lagrange are not responsible for the lower adjustments to the former points; and that the construction of the Atlanta, Birmingham & Atlantic established no new competitive conditions, but merely afforded an additional terminal line from the west. The conditions which led to the Cooley adjustment of 1886, under which certain relations of rates between the Ohio and Mississippi River crossings to the south-east were established and have since been maintained, were recited in testimony and in briefs.

The history of these adjustments, both with reference to the relation of rates from the various crossings and the lowering of the Atlanta rates from time to time, has been several times referred to by the Commission in other cases. *Receivers & Shippers Asso. of Cincinnati v. O. N. O. & T. P. Ry. Co.*, 18 I. C. C., 440; *Morgan Grain Co. v. A. C. L. R. R. Co.*, 19 I. C. C., 460. Rates to Atlanta from both the east and the west are now involved in cases before the Commission and are defended not only therein but in connection with applications for permission to continue existing deviations from the long-and-short-haul provision of the fourth section.

Prior to 1884, rates from the crossings to both Opelika and Columbus were made on basis of combination on Montgomery, but in December, 1883, Columbus was put on the Macon basis from the west, it being alleged that this action was necessary in order to enable the rail lines through Montgomery to meet the competition of the water lines to Columbus and of the rail lines to Macon, a rival distributing point. Subsequent to this reduction an investigation of the Opelika rates was made by the Railroad Commission of Alabama, which was of the opinion that the rates to Opelika from the west should not exceed those to Columbus, a point 28 miles more distant. The railroads compromised by the establishment of rates higher than those to Columbus by the amount of the so-called "Ball arbitraries," suggested by a member of the Alabama commission in his dissenting opinion. These rates, which were established on March 6, 1885, were not satisfactory to the people of Opelika, and complaint was filed with this Commission alleging discrimination against that point and in favor of Montgomery and Columbus. This Commission found the unjust discrimination under section 3, as alleged, but declined to grant relief, suggesting that if the complainants desired to proceed

28 I. C. C.

further they amend their petition so as to either set out the facts on which they claimed for themselves lower rates than were accorded intermediate towns or to ask for a strict enforcement of the long and short haul provision as against Montgomery and Columbus. *Harwell v. C. & W. R. R. Co.*, 1 I. C. C., 236. No further action, however, was taken by complainants; but following the Commission's decision, the Opelika rates were reduced to the Columbus basis, effective January 15, 1888. Correspondence between officials of the Columbus & Western, Louisville & Nashville, and other railways is submitted as proof that the Louisville & Nashville strongly opposed any reduction to Opelika and that the one made was the result of the action of the Columbus & Western, now a part of the Central of Georgia Railway. There is no proof or showing as to the line or lines which joined in the establishment of these rates. The Columbus & Western did not reach Birmingham at the time of the reduction, but entered it on July 1, 1888.

The contention of the defendants that competitive conditions at Opelika and at Lagrange are substantially dissimilar is based on the inability of the Atlanta, Birmingham & Atlantic to control rates from the various crossings to the latter point and the fact that no carrier reaching Opelika also reaches Lagrange. It is true that the Atlanta, Birmingham & Atlantic was constructed through this territory after competitive conditions had become more or less settled and that, without the concurrence of one or more of its connections, it can not establish to Lagrange the through rates which it thinks that point entitled to; but it should be borne in mind that the lines of the Central of Georgia do not reach any of the crossings and that the present rates to Opelika were established by concurrence of the same carriers which participate in the Lagrange traffic. And it is no answer to a charge of unjust discrimination to show that the adjustment to the lower rated point was made years ago and has since been maintained, for it can not be said that the favored point thereby secured rights superior to those of a point now similarly situated from a transportation standpoint, but which at the time of the adjustment aforesaid was local or noncompetitive.

Nor is there merit in the contention of the defendants that because no carrier reaching Opelika also reaches Lagrange there is no discrimination against Lagrange forbidden by the act, for it is not essential that a carrier actually reach a point in order to engage in its traffic. The Atlanta & West Point and Western of Alabama railways have the same officers and are operated as one line; they connect and form through routes through Montgomery, Atlanta, and other points, and the carriers generally serving the southeast join in through rates and routes to both Lagrange and Opelika in connec-

tion with one or both of the roads named and in connection with either or both the Central of Georgia and Atlanta, Birmingham & Atlantic. The Central of Georgia itself concurs in tariffs naming rates to Lagrange.

The conditions of transportation and competition which brought about the lower adjustment of rates to Atlanta, as heretofore stated, have been discussed in other cases before the Commission; they are not substantially similar to those existing at Lagrange, and will be considered in connection with existing deviations from the provisions of the fourth section on traffic from New Orleans and other points through Montgomery. The justification for the latter can be more broadly and comprehensively considered on the testimony presented by the carriers on their applications to maintain lower rates to Atlanta than to Lagrange and Opelika and lower rates to the latter points than to intermediate noncompetitive points. No finding on this feature of the complaint will now be made, and the order herein made under section 3 is without prejudice to any action the Commission may take upon the defendants' applications for relief under the fourth section.

Upon the facts, circumstances, and conditions shown of record we are of the opinion that the present adjustment of rates is unjustly discriminatory and unduly prejudicial to Lagrange, and that from Cincinnati, Ohio, the rates to Lagrange should not exceed those to Opelika; that from the other Ohio River crossings and from Memphis, Tenn., and New Orleans, La., the rates to Lagrange should not exceed those to Opelika by amounts greater on the various classes than the following:

Class----	1	2	3	4	5	6	A	B	C	D	E	H	F
Cents----	10	10	10	8	7	6	5	2	2	2	4	4	4

This finding applies not only to class but to commodity rates. Lagrange should be accorded the benefit of commodity rates from Cincinnati not higher than those concurrently in effect to Opelika, and from the other crossings not higher than those to Opelika by amounts greater than the difference between the class rates to Opelika which would be applicable in the absence of commodity rates and corresponding class rates to Lagrange.

An order will be entered accordingly.

No. 4961.  
ATLANTA JOURNAL COMPANY ET AL.  
v.  
SEABOARD AIR LINE RAILWAY ET AL.

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No. 4961 (Sub-No. 1).  
CONSTITUTION PUBLISHING COMPANY ET AL.  
v.  
CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

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No. 4961 (Sub-No. 2).  
GEORGIAN COMPANY ET AL.  
v.  
CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

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*Submitted May 17, 1913. Decided June 16, 1913.*

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1. The rates on news print paper from Bellows Falls, Vt., Franklin and Berlin, N. H., and Fort Edward and Brownville, N. Y., to Atlanta, Ga., not found to be unreasonable, in violation of section 1 of the act to regulate commerce, or unjustly discriminatory as compared with rates on wrapping paper from the same points of origin, in violation of section 3.
2. The question whether unjust discrimination exists against Atlanta and in favor of Chattanooga, Tenn., as alleged, reserved pending decision in the case of *Atlanta Freight Bureau v. S. Ry. Co.*, docket No. 4637.

*Wimbish & Ellis* for complainants.  
*R. Walton Moore* and *Charles D. Drayton* for defendants.  
*Charles H. Blatchford* for the Boston & Maine Railroad.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

These complaints, brought by corporations engaged in the publication of newspapers at Atlanta, Ga., allege that Atlanta is unjustly discriminated against in that more favorable rates are applicable to Chattanooga, Tenn., than to Atlanta for the transportation of news print paper from certain points in New England; also that

the petitioners are unjustly discriminated against in that lower rates are accorded for the transportation of wrapping paper than for news print paper from the same points to Atlanta. The news print paper rates are also alleged to be unreasonable, in violation of section 1 of the act to regulate commerce. Reparation is asked.

The points of origin specified are Bellows Falls, Vt., Franklin and Berlin, N. H., and Fort Edward and Brownville, N. Y., and the rates challenged are the rail-and-water rates from all of these points and the rail rate from Berlin.

Via rail Chattanooga is 29 miles less distant than Atlanta from the points named and from eastern port cities; via the short-line ocean-and-rail routes through Savannah and Charleston, Atlanta is intermediate to Chattanooga and 138 miles less distant; via ocean-and-rail through Norfolk, Atlanta is 54 miles less distant. The actual ocean-and-rail distances are greater than via rail, but prorating arbitraries of 250 miles from New York to Savannah and Charleston, 300 miles from Boston to those ports, and 160 miles from New York to Norfolk are used. The distance figured on this basis is called the constructive mileage and will hereinafter be so referred to.

The short line from Savannah to Atlanta is over the Seaboard Air Line, Macon, Dublin & Savannah, and Southern railways, 260 miles. Of these carriers only the latter is a party to the complaints involving the ocean-and-rail rates; and the Western & Atlantic, the short line from Atlanta to Chattanooga, is not a party to any of the complaints. The route of the Central of Georgia and Southern railways is 279 miles, and that of the Central of Georgia alone, 294 miles. The short line from Savannah to Chattanooga is through Atlanta, 398 miles, but via the route of the Central of Georgia, which is 450 miles, Atlanta is not intermediate. The constructive rail-and-ocean mileages via Savannah and the short-line rail mileages from the points of origin involved to Atlanta and Chattanooga are approximately as follows:

From—	To Atlanta.		To Chattanooga.	
	Rail, ocean and rail.	All rail.	Rail, ocean and rail.	All rail.
Berlin, N. H. ....	789	1,142	927	1,113
Franklin, N. H. ....	656	1,089	794	1,060
Bellows Falls, Vt. ....	674	1,001	812	972
Fort Edward, N. Y. ....	707	981	845	952
Brownville, N. Y. ....	847	1,108	985	1,077

A large part of the shipments on which reparation is asked moved through the port of Charleston, and the distance therefrom to Atlanta is 309 miles.

The rates applicable on news print paper to Atlanta and Chattanooga are class A, southern classification. To Chattanooga these rates apply also on wrapping paper in rolls 20 inches and over in diameter. To Atlanta commodity rates on the latter equal, via the rail-and-water routes, to the class-A rates to Chattanooga, are published. The rates to Chattanooga via the all-rail and the rail-and-water routes are the same, but to Atlanta there are differentials between the routes, as will hereinafter be explained. The rates are as follows:

From—	To Atlanta.				To Chattanooga.
	Class A.		Commodity, wrapping paper.		Class A.
	All rail	Rail and water.	All rail.	Rail and water.	All rail and rail and water.
Berlin, N. H. ....	43	42	39	38	36
Franklin, N. H. ....	41	40	37	36	36
Bellows Falls, Vt. ....	41	40	37½	36	36
Fort Edward, N. Y. ....	41	40	37	36	36
Brownville, N. Y. ....	41	40	37	36	36

The first-class ocean-and-rail rate from Boston and New York to Atlanta is \$1.05; class A, 36 cents. From eastern port cities the differentials between the all-rail and the ocean-and-rail routes are as follows:

Class-----	1	2	3	4	5	6	A
Differential---	12	10	9	8	6	5	5

The all-rail rates are therefore \$1.17 first class, and 41 cents class A.

These differentials are the result of competition between the ocean carriers and the trunk lines for control of traffic from eastern ports and interior eastern points to the southeast. The water carriers were unable to establish the same scale from interior points, due to the refusal of the eastern rail lines to join in through rates with them; and as it was necessary, in order to secure a portion of the traffic, to establish rates lower than were applicable via the all-rail routes, tariffs naming rates therefrom were published without the concurrence of the rail lines to the eastern ports, the latter being paid their full locals. The differentials from the interior are on the following scale:

Class-----	1	2	3	4	5	6	A
Differential---	4	3	2	2	1	1	1

All-rail rates to the southeast from interior points east of the Buffalo-Pittsburgh line are made with reference to the specifics of the trunk lines to the Virginia cities; and as the specifics from all of the points here in question with the exception of Berlin, which is

2 cents higher, are the same as from the ports, they take the 41-cent rate to Atlanta. As above stated, the differential between routes is 1 cent on class A, and therefore the rail-ocean-and-rail rates are 40 cents from all of the points of origin involved except Berlin, and from that point 42 cents.

From eastern ports the ocean-and-rail rates through Norfolk to Chattanooga are the same as those to Atlanta through Savannah or Charleston. This parity has been maintained for many years, and was due to the policy of the Norfolk & Western and the old East Tennessee & Georgia Railroad (afterwards the East Tennessee, Virginia & Georgia Railroad and now a part of the Southern Railway system), neither of which had any interest in Atlanta traffic from the east. The rates thus established were met by the lines leading through Charleston and Savannah.

Likewise, because of the policy of the Cincinnati, New Orleans & Texas Pacific Railway and other Ohio River lines, no differentials are made between the all-rail and the rail-and-water routes to certain territory in the south, including Chattanooga; consequently, while there is a 5-cent differential on class A from Boston to Atlanta, the rates all-rail and rail-ocean-and-rail to Chattanooga are alike, 36 cents. The principle of rate making from interior eastern points applies alike to Atlanta and Chattanooga; and therefore the 36-cent rate on news print paper, via both the rail and the rail-ocean-and-rail routes, is applicable to Chattanooga from all of the points of origin here in question except Berlin, and that point is 2 cents higher for the reason heretofore stated.

Thus while Atlanta and Chattanooga have the same rates from eastern port cities via ocean-and-rail, the latter has an advantage of 12 cents first class and 5 cents class A via rail; and from the interior this advantage is the same via rail and almost as great via the water routes. For instance, from Bellows Falls the Chattanooga rates are the same as from the ports, \$1.05 first class and 36 cents class A, rail or rail-ocean-and-rail; to Atlanta the rail first-class rate is \$1.17 and class A 41 cents; rail-ocean-and-rail, first class, \$1.13; class A, 40 cents. Although the ocean route controls the rates to Atlanta, and it is contended by the defendants has forced them to an abnormally low basis, Chattanooga, a point farther distant from the ports, is enabled, by reason of the policy of the carriers serving it, to secure an advantage over Atlanta not only from interior eastern points, but from the ports themselves.

This general situation is involved in the case of *Atlanta Freight Bureau v. S. Ry. Co.*, docket No. 4637, the record in which, together with that in *Atlanta Freight Bureau v. N. C. & St. L. Ry.*, docket 4461, was stipulated herein. In the first-named case the complainant  
28 I. C. C.



asks, among other things, the elimination of differentials between the rail and the rail-and-water routes from the east and that Atlanta be placed on a parity with Chattanooga in rates from that section. The defendants justify the discrimination in favor of Chattanooga from interior eastern points on the ground that it is the policy of the trunk lines not to apply higher rates from interior points than from the ports, as to do so would cause violations of the long-and-short-haul clause of section 4 of the act.

News print paper does not originate at the ports, and it is not contended by defendants that any of the points of origin here involved are intermediate via the short-rail routes to either Chattanooga or Atlanta. Neither is there such contention as to any of the points of production or manufacture of news print paper in New York or the New England states, the record containing no definite statement of the territory of production or the rates and distances therefrom to Atlanta or Chattanooga. It does appear, however, that news print paper originates at many points in northern New York east of the Buffalo-Pittsburgh line, and at many points in New England; that rates therefrom to Atlanta and Chattanooga are made with reference to the Virginia cities arbitraries; and that the usual class-rate adjustment between Atlanta and Chattanooga and other Tennessee points obtains.

From correspondence submitted in evidence it would appear that the Cincinnati, New Orleans & Texas Pacific, which, according to the testimony, has no control over the making of rates from the east to Chattanooga beyond establishing the policy that there shall be no differentials in favor of the water routes, is not opposed to an increase in the paper rates to that point, provided it is not called upon to waive the policy aforesaid. The Southern Railway apparently advocated the increase, but wanted the establishment of the differential basis.

It is stated by the defendants that the commodity rates on wrapping paper were established in 1905 in order to enable Atlanta manufacturers of paper bags and wrapping paper to continue in and develop the business at that point, which, owing to severe competition, they could not have done under class-A rates. The difference in rates is further defended on the ground that news print paper, which comes in rolls 30 inches in diameter, from 33½ to 67 inches long, and from 600 to 1,200 pounds in weight, is easily damaged, and yields practically no salvage; that wrapping paper, which comes in rolls of about 300 pounds, is stronger and not so susceptible to damage, and even if damaged can be cut and used. Witness for the Georgia Railroad testified that during five years that carrier brought into Atlanta 66,281,543 pounds of paper, of which 47,942,397 pounds were

news print; that claims against the total shipments amounting to \$6,957.36 were paid, of which but \$46.80 was for wrapping paper. For the five-year period the paid claims on news print paper amounted to 1.4 cents per 100 pounds, or about 3.6 per cent of the gross earnings on the traffic. The average on all traffic was 2.35 per cent.

The average loading of news print paper is estimated to be from 40,000 to 45,000 pounds. Based on 43,000 pounds the all-rail revenue from Bellows Falls would be \$176.30, and from Berlin, \$184.90 per car, or 8.2 and 7.5 mills per ton-mile, respectively. Via the water route the earnings on the same loading would be \$4.30 per car less.

The value of wrapping paper is stated generally to be from 2½ to 5 cents per pound, while news print paper is said to have sold for several years for 2 cents per pound at the mill. The minimum applicable to news print paper is 30,000 pounds and to wrapping paper (under the commodity rates referred to) 40,000 pounds.

The average distance from the five points of origin to the nearest port (Boston or New York, as the case may be) is 192 miles, and the average of the local rates thereto is 10.7 cents. As heretofore explained, these locals, together with marine insurance, wharfage, and transfer at Savannah, are largely absorbed by the water carriers and the lines from the South Atlantic ports. The earnings of the Central of Georgia from this traffic averages 11.3 cents per 100 pounds for 294 miles from Savannah to Atlanta. To Atlanta that line receives 7.7 mills per ton-mile on news print paper and 6.26 mills on wrapping paper; to Chattanooga, 4.84 mills on either of the commodities. For the year ended June 30, 1912, its average per-ton-mile earnings on all traffic was 11.2 mills.

Upon the facts of record we are unable to find that the rates here challenged are unreasonable, in violation of section 1, or that the difference in rates in favor of wrapping paper is such unjust discrimination as is prohibited by the act to regulate commerce.

As above stated, the general question of discrimination against Atlanta and in favor of Chattanooga on traffic from the eastern ports and interior eastern points is involved in cases now before the Commission, and there do not appear to be any transportation or competitive conditions which differentiate the transportation of news print paper from the great bulk of traffic from interior points east of the Buffalo-Pittsburgh line. Upon the record in the *Atlanta Freight Bureau case*, *supra*, in which the adjustment between the east and the southeast is more fully and broadly dealt with, not only with respect to the relation existing between the ports and the interior, but between Atlanta and other Georgia and Alabama points to which there are differentials between the rail and the ocean routes, and

Chattanooga and other Tennessee points to which the differentials do not apply, the Commission can more satisfactorily and comprehensively dispose of the question of discrimination presented in both cases. The *Freight Bureau case* involves the numbered class, class A, and commodity rates from both the eastern ports and the interior east, and the transportation of news print paper will necessarily be considered in connection with that of all other commodities moving under class-A rates.

There was testimony relative to the parity on certain classes between Baltimore and Louisville to Atlanta. Rates from Boston and other eastern ports are made with relation to the rates from Baltimore, and consequently the latter govern those from interior eastern points. This parity between Louisville and Baltimore, which has not been maintained as to class A, is involved in the *Freight Bureau case* and will be considered in connection therewith.

No order will now be made in this case for the reason that the question of discrimination still remains, and with it the prayer of the complainants for reparation. After decision of the *Atlanta Freight Bureau case, supra*, involving rates from the east, further separate consideration of this case will be unnecessary, for should the complaint in that case be sustained in respect of the discrimination alleged, the order therein will cover that feature of this complaint, and should the decision of the Commission require an order of dismissal a similar order will be entered in this case.

28 I. C. C.

No. 5241.

IOWA STATE BOARD OF RAILROAD COMMISSIONERS

v.

ARIZONA EASTERN RAILROAD COMPANY ET AL.

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*Submitted May 1, 1913. Decided June 18, 1913.*

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It appears that rates from eastern points of origin to interior Iowa destinations are made by adding together the rate to the Mississippi River and the rate from that river to destination, and that rates from interior Iowa points to the west are made by adding together the local rate up to the Missouri River and the rate from that river; upon complaint that the through rates which result from the combination of these two are unreasonable and unjustly discriminatory; *Held, That—*

1. Rates from these Iowa points to points in New Mexico should not be pronounced unlawful.
2. The present rates between points in Iowa and the intermountain territory, of which Spokane, Reno, and Phoenix are illustrative, are not unlawful.
3. Rates from Iowa points to Utah and Colorado common points are unreasonable. The state of Iowa should be divided into five zones as to this traffic, and rates from each zone should be constructed by adding to the Missouri River rate a fifth of the total spread now existing in rates between the Missouri and Mississippi rivers.
4. Rates from such points to points in Kansas and Nebraska are unreasonable to the extent that they exceed the mileage scale of interstate class and commodity rates suggested in this report.

*Clifford Thorne, J. H. Henderson, and D. N. Lewis* for complainant.

*W. F. Dickinson* for Rock Island lines.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*C. C. Wright* for Chicago & North Western Railway Company and others.

*T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

*H. A. Scandrett* for Union Pacific Railroad Company and others.

*O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company and others.

*Winston, Payne, Strawn & Shaw* for Chicago Great Western Railroad Company.

*W. H. Bremner* for Minneapolis & St. Louis Railroad Company.

*R. V. Fletcher* and *A. P. Humburg* for Illinois Central Railroad Company.

*H. G. Herbel* for Missouri Pacific Railway Company and others.

*Charles Donnelly* for Northern Pacific Railway Company.

*N. S. Brown* for Wabash Railroad Company.

*W. F. Dickinson* and *J. L. Coleman* for all defendants.

#### REPORT OF THE COMMISSION.

##### *PROUTY, Commissioner:*

This complaint is prosecuted by the railroad commission of the state of Iowa, and puts in issue rates from all interior points in that state to practically all destinations west of the Missouri River. The complainant stated upon the hearing that no question was made as to the reasonableness of the present rates from Iowa points up to the Missouri River, nor from the Missouri River to western destinations, the claim being that the through rate which results from the combination of these two is unreasonable and discriminatory.

Rates from eastern points of origin to interior Iowa destinations are made by adding together the rate to the Mississippi River and the rate from that river to destination. Rates from interior Iowa points to the west are made by adding together the local rate up to the Missouri River and the rate from that river. An analysis of the various complaints brought by the state of Iowa will show that this method of rate making is really responsible for all its difficulties.

There are two distinct grounds of complaint:

First. That the through rate is inherently unreasonable because of the manner in which it is constructed.

Second. That rates to and from interior Iowa points are higher than those to and from Chicago, St. Louis, Kansas City, and other points similarly situated, and that this is a discrimination against the Iowa points which prevents them from competing with the breaking or base point.

The evidence submitted by the complainant was of three kinds.

(a) Extensive tables were introduced showing that the combination upon the interior Iowa point exceeded that upon Chicago, St. Louis, and the Missouri River; that is to say, the rate from New York or any other point east of the Indiana-Illinois state line to St. Louis or Kansas City, plus the rate from St. Louis or Kansas City to a western destination, would be less than the rate to the interior Iowa point plus the rate out. The tables submitted by the complainant take 25 illustrative points in the state of Iowa for the purposes of comparison, and those tables abundantly show the fact to be as claimed by the complainant.

In this connection certain other tables were introduced by the complainant tending to show that rates from interior points in the state of Iowa to a given western destination are higher, mile for mile, than those from other points the same distance from that destination. One of these selected points in Iowa would be compared with some point in Missouri or southern Minnesota. These tables are open to criticism in that by selecting for purposes of comparison a point upon the edge of some territorial group a distance may be found which would not be fairly comparable with the average distance from the entire group from which the rate applied. They are not, therefore, particularly significant.

(b) The complainant introduced as witnesses certain persons engaged in manufacturing in the state of Iowa, who gave it as their belief that freight rates discriminated against them as compared with their competitors at St. Louis, Chicago, and the Missouri River. These manufacturers as a rule draw their materials from east of the Indiana-Illinois state line. They are obliged to pay a higher rate in and again a higher rate out, and it must be true that so far as the freight rate alone is concerned they are at a disadvantage with respect to all materials which originate in the east.

(c) Statements were submitted showing with respect to industries located at interior Iowa points the total amount of freight paid in and the total amount paid out upon the actual business transacted. This was contrasted with the amount of freight which would be paid by competitors engaged in the same business at Chicago, St. Louis, or Kansas City. In all the illustrative cases taken the amount of freight paid at the Iowa point was distinctly more than that which would have been paid at the point selected for comparison.

All this testimony simply shows what is perfectly evident from an examination of the rates themselves and a statement of the manner in which they are constructed. The manufacturer at the interior Iowa point who obtains his material east of the Indiana-Illinois line pays a rate made up of the rate to St. Louis or the Mississippi River, which is substantially the St. Louis rate, plus the local rate from that point. When his manufactured product goes out he pays either the St. Louis rate or a rate made up of the local from his factory to the Missouri River plus the Missouri River rate. In the first case he will stand at a disadvantage as compared with his competitor at St. Louis by exactly the amount of the local rate which he pays from the Mississippi River to his factory. In the second case he stands at a disadvantage as compared with either the Mississippi or Missouri River to the extent that the combination of locals which he pays exceeds the amount of the rate between the rivers.

There can be no possible question but that the interior Iowa town rests under a disadvantage in the matter of freight rates as compared with Chicago, St. Louis, and Kansas City. It is probable that the importance of this handicap in retarding the development of manufacturing in the state of Iowa has been overstated. It is doubtful whether, if a system of rates were devised under which every Iowa station enjoyed the same freight-rate advantage as does Chicago and St. Louis, that would materially affect the development of that territory. Iowa towns located upon the Missouri and Mississippi rivers enjoy substantially the same rates as do St. Louis and Kansas City, yet there has not been the same commercial development. However, the disadvantage is a real one; it must produce some effect, and if an undue discrimination it ought to be removed.

The defendants upon their part undertake to show that rates from the various interior Iowa points are reasonable. This, however, is not the whole question. The complaint is that these rates are too high in comparison with those from St. Louis. The carriers should show, therefore, that rates to western destinations from these Iowa points are reasonable, not alone in themselves, but also in comparison with those rates which they have established from the other competitive points.

As already said, the rates under attack cover most territory west of the Missouri River, but the rates themselves are stated in different tariffs of the carriers, are constructed upon entirely different principles and can be best considered in groups. The following groupings will be convenient for this purpose:

1. Rates to points in New Mexico like Albuquerque.
2. Rates to Spokane, Reno, and Phoenix.
3. Rates to Utah common points and Colorado common points.
4. Rates to Kansas and Nebraska.

#### RATES TO NEW MEXICO.

In discussing these rates we shall consider mainly class rates, using the first-class rate as illustrative. Ordinarily whatever relation is established for class rates would apply in case of commodity rates.

The first-class rate from Omaha to points upon the Santa Fe in New Mexico and similar territory is 30 cents above that from Kansas City. Rates from a certain part of Iowa are the same as from St. Louis, unless the combination upon Omaha or other Missouri River points is less. From another section of Iowa these rates are the same as from Peoria and from still a third, although a comparatively small section, they are upon the basis of Chicago. We have

examined the distances from these points as compared with those from St. Louis, Peoria, and Chicago, and find that ordinarily and upon the average the rate from Iowa, mile for mile, is as low as that from these cities. While some of these rates in the southwestern part of the state may be somewhat high, we are not satisfied that rates to this section are on the whole unreasonable.

It is shown by the complainant that rates to these New Mexico destinations do not equalize upon these Iowa points, and, in our opinion, they ought not to. Iowa is not on the direct line between the east and these New Mexico points. The short line from Chicago to Kansas City is the Santa Fe, which passes through the southeastern corner of Iowa. Traffic to those New Mexico points from the east is rather deflected from the direct line in going to Chicago and still more so in passing through central Iowa. While these interior points may be entitled to the same treatment as their larger rivals, when upon the direct line of transportation, they can hardly expect to compete in all territory with Chicago or with St. Louis, which have avenues of transportation extending in all directions and are therefore able to draw from and ship to all markets.

Upon the whole, we are of the opinion that these Iowa rates to New Mexico destinations ought not to be pronounced unlawful.

#### RATES TO SPOKANE, RENO, AND PHOENIX.

In the *Spokane case*, 19 I. C. C., 162, 179, the Commission established to Spokane the following first-class rates:

From—		From—	
Missouri River .....	\$2.50	Cincinnati-Detroit .....	\$3.05
Mississippi River .....	2.80	Pittsburgh .....	3.20
Chicago .....	2.90	New York .....	3.50

In the *Reno case*, 19 I. C. C., 238, we established the same rates to Reno from Kansas City, St. Louis, Chicago, Cincinnati, and Pittsburgh, and in the *Phoenix case*, 19 I. C. C., 257, 258, we fixed as reasonable the same rates to Phoenix as were established in the *Reno case* to Reno.

In the *Spokane case*, the Missouri River, the Mississippi River, Chicago, etc., were used as terms expressive of certain territorial groups, which were defined by reference to Northern Pacific Railway Company's joint freight tariff No. 23500, I. C. C. No. 3295. In the *Reno case* we used these same terms to define certain territorial groups taken from the transcontinental tariffs of the carriers. In the *Phoenix case* nothing was said as to the meaning of these terms. As used in both the *Spokane case* and the *Reno case*, the Missouri River embraced points upon that river, a considerable amount of territory to the west and a very limited territory to the east, while



the Mississippi River included, generally speaking, the territory between the Mississippi and the Missouri. Practically the entire state of Iowa was embraced in Mississippi River territory, as defined in the opinions in both those cases.

The carriers now maintain rates, following the opinions and orders in those cases, of \$2.50 first-class, with corresponding rates upon the other classes from the Missouri River to all this territory from Spokane upon the north to Phoenix upon the south. The rate from Mississippi River territory, including the whole state of Iowa, is \$2.80, while that from Chicago, which includes, roughly, territory between the Mississippi River and a line drawn north and south through the city of Chicago, is \$2.90.

This fact should, however, be noted: While these tariffs apply a rate of \$2.80 from the Mississippi River, and, therefore, from the whole state of Iowa, they contain a provision that when the combination upon the Missouri River is less the lower rate shall apply. The working out of this tariff is that from the eastern two-thirds or three-fourths of the state the \$2.80 rate applies, while the remaining portion upon the west takes a rate varying from \$2.80, upon the east, to \$2.50 at the Missouri River.

It is evident that in stating rates between these remote sections territorial groups of considerable extent must be employed. That method had been adopted by the carriers and was continued by the Commission. We did not at that time particularly consider the propriety of these territorial groupings in the east, but accepted what had been in effect without special examination. Upon a more careful consideration of the matter we are impressed that rates from Iowa to this territory are on the whole favorable to that state. We have already held that the state as a whole is not entitled to as low a rate as St. Louis to points in New Mexico, but these tariffs give the entire state the benefit of the St. Louis rate through New Mexico to more distant points, and the same observation may be made with respect to the far northwest.

It is true that the Mississippi River territorial group, where it embraces the state of Iowa, is wider than the next two groups going east, and that the spread between the Missouri River and the Mississippi River is also greater than that between the Mississippi River and Chicago. This might call for a division of the Mississippi River group, but in view of the entire situation we do not think that Iowa can fairly complain of this adjustment of rates, and we hold, therefore, that the present rates between points in the state of Iowa and the intermountain territory, of which Phoenix, Reno, and Spokane are illustrative, are not unlawful.

## RATES TO UTAH AND COLORADO COMMON POINTS.

In the *Salt Lake City case*, 19 I. C. C., 218, 224, the Commission established between Utah common points and eastern destinations the following rates, first class:

Chicago .....	\$2. 45
Mississippi River.....	2. 27
Missouri River .....	1. 90

We also established certain commodity rates between these same territories. In this case also Missouri River, Mississippi River, and Chicago were used to designate certain territorial groups defined in joint freight traffic Trans-Missouri No. 20-E, I. C. C. No. 207.

Mississippi River territory as defined in the tariff referred to did not embrace the whole of Iowa. That state was divided by a line running east and west, the southern two-thirds being embraced in Mississippi River territory, while the northern one-third was known as Peoria territory and took a rate between the Mississippi River and Chicago. The carriers in complying with our order have applied the Mississippi River rate to that portion of the state which was Mississippi River territory and have applied to Peoria territory the Chicago rate.

The Commission in disposing of the above case did not consider at all the territorial groupings upon the east. The complaint under which we acted was brought by the commercial interests of Salt Lake City and eastern shippers were not represented. Upon a further examination of this situation we are of the opinion that the groups provided as to the state of Iowa and those now in force under the tariffs of the defendants covering that state result in discriminatory and unlawful rates and that the groups should be recast and different rates established. We are of the opinion that the same groups hereinafter designated for Colorado common points should be used as to Utah common points, and that rates should be constructed in the same manner.

In the *Kindel case*, 15 I. C. C., 555, the Commission established rates from Chicago and the Mississippi River to Colorado common points, as follows:

Chicago.....	\$1. 80
Mississippi River .....	1. 62
Missouri River.....	1. 25

Under this order of the Commission carriers have constructed their rates between Iowa points and Colorado common points by carrying the Mississippi River rate west until it meets the combination upon the Missouri River. The result is to apply to substantially the eastern two-thirds of Iowa a rate of \$1.62, while from the western one-

third this rate gradually grades down from the east to \$1.25 at the Missouri River. In this proceeding carriers have entered into an elaborate justification of the rates, based upon the cost of the service. They allege that the expense of handling business from the interior of Iowa is as great or greater than from the Mississippi River, and therefore that they are warranted in imposing the same rate.

They reach this conclusion by taking some point upon the Mississippi River like Burlington, upon the Chicago, Burlington & Quincy Railroad. Burlington is a classification point. Traffic is brought in from various points of origin to the east and is unloaded, classified, and reloaded. By this process solid carloads are made up which run, without being opened, to the Missouri River. Freight originating in the interior of Iowa is taken up upon the way trains of the Burlington and transported in those trains, sometimes to the Missouri River and occasionally to an interior assembling point. It appears that freight is sometimes back-hauled from the interior Iowa point to the Mississippi River in order that it may be classified and sent on in the through train from that point.

The defendants insist that the cost of handling business from the Mississippi River, where this concentration of freight occurs, is less than from the small interior station where the business must be done upon local trains. It is not clear that the fact is as claimed, but assuming that it may be, the conclusion would not follow. Burlington can only be a classification point because freight is brought in from stations to the east of it. This freight is taken up by way trains in Illinois, just as the freight in Iowa is taken up in that state and carried to an assembling point. The fact that Burlington or the other Mississippi River cities upon different railroads happen to be these assembling points certainly can not give to those points a better freight rate than is enjoyed by towns beyond. If this were so, a change in the operating arrangements of a railroad by changing a classification point would work a change in the rates themselves. To admit the truth of this contention would be to say that every city which could originate a carload of freight was entitled to a lower rate than the intermediate point which could not furnish an equal amount of traffic. The argument is defective at every point. Granting that the cost of service was to control, it is by no means certain that the great expense of providing terminals in large cities and of operating those terminals does not offset the greater volume of business which is handled. We do not feel that the element of cost in this situation should be controlling.

When the Commission prescribed a rate of \$1.62 between the Mississippi River and Colorado common points and left in effect a rate of \$1.25 from the Missouri River, thereby recognizing a difference of

37 cents between the east and the west edges of the state of Iowa, it did not mean to say that the highest rate should be applied to practically the whole state, nor did it say so by implication. Upon the contrary, the fair way to have constructed these tariffs would have been to distribute this 37 cents between the western and the eastern boundaries. The tariffs of the carriers should be so corrected now as to accomplish this purpose. This can be done by dividing the state into zones by lines running north and south, and by applying between points in these respective zones rates which fairly recognize the principle suggested. The complainant was asked to suggest the number and territorial extent of such zones, and has done so. It requests us to construct 11 zones, giving to each zone its due proportion of this spread between the rivers.

In our opinion the number of zones suggested by the complainant is unnecessarily great. The state should be divided into five zones, and rates from each zone constructed by adding to the Missouri River rate a fifth of the total spread, whatever that may be. Counting the zones east from the Missouri River the first-class rate to zone 1 should be constructed by adding to the Missouri River rate 20 per cent of the spread, for the second zone 40 per cent, for the third 60 per cent, and for the fourth 80 per cent. The fifth zone would take the Mississippi River rate. In *Colo. Mfrs. Asso. v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 82, decided at the same time with this case, the first-class rate between the Missouri River and Colorado common points was reduced 10 cents, thus making the present spread between the rivers with respect to that traffic 47 cents. Constructing rates upon the basis above indicated the following would result:

To zone 1.....	\$1. 25
To zone 2.....	1. 35
To zone 3.....	1. 44
To zone 4.....	1. 53
To zone 5.....	1. 62

We are of the opinion that reasonable maximum rates would result by taking the present Mississippi River and Missouri River rates between Colorado common points and Utah common points and applying to zones created as above the rates which would result from the method above stated, and that the present rates are unjust and unreasonable to the extent that they exceed rates so ascertained.

While this will sometimes involve the moving of traffic from a lower through a higher group, and therefore a disregard of the fourth section, still the same thing happens in central freight association territory with no inequitable results. No reason is apparent why rates may not be constructed in this manner from Iowa to both Colorado and Utah points.

## RATES TO POINTS IN KANSAS AND NEBRASKA.

Perhaps the most difficult situation to deal with is presented by territory lying immediately west of Iowa. These rates are now constructed by combination upon the Missouri River. We understand that, as a practical matter, the rate of the Iowa commission is applied in the state of Iowa, and that the rate of the Nebraska commission is used in Nebraska. Both of these rates are said to be sufficiently low, and the carriers earnestly insist that they ought not to be required to take less than the resulting combination. The complainant answers that the through rate ought not to be equal to the sum of the intermediates, and that, conceding as it does that the Iowa state rates and the Nebraska state rates are reasonable, still a through rate should be constructed which is less than the sum of the two.

This Commission has often held, for reasons which need not be restated here, that in theory the contention of the complainant is sound. Four terminal services are involved in the two intermediate rates, while but two such services are necessary in the through rate. While many situations exist where the transfer from one line to another may be equivalent to a terminal service, still the general rule is otherwise, and if discrimination is to be avoided some general rule must be applied. This Commission has several times held, for instance, that rates into territory south of Virginia cities should be made somewhat less than the full combination upon the Virginia city. The same principle has been frequently recognized in the construction of through tariffs.

The real difficulty, however, in Iowa, is found in the manner in which rates are constructed upon the two sides of that state. The question is rather one of discrimination than of inherent reasonableness. Take the rate from New York to a point west of the Missouri River. The St. Louis merchant pays the rate up to the Mississippi River plus that from the Mississippi to the Missouri plus that from the Missouri to destination. The Kansas City merchant at the present time pays a rate from New York to Kansas City which is 5 cents less than the combination upon the Mississippi River and adds to that the local from the Missouri River. The merchant at Des Moines pays the rate to the Mississippi River plus that from the Mississippi River to Des Moines plus that from Des Moines to the Missouri River plus that from the Missouri River to destination. In other words, he pays more than St. Louis by the amount by which the sum of the locals exceeds the overhead rate. To-day the first-class rate on traffic originating at New York City from the Mississippi River to Des Moines is 37 cents; from Des Moines to the Missouri River, 31.2 cents, making the through rate 68.2 cents as compared with 60 cents.

Several methods for removing the present discriminatory features of these rates have been considered, and a conclusion has finally been reached that the simplest, most effective, and fairest method is to prescribe a mileage scale of interstate class and commodity rates applicable between points in the state of Iowa and points in Nebraska and Kansas. In the Appendix hereto such a mileage scale for class rates has been suggested. The carriers may, on or before September 1 next, file with us their objections to this mileage scale, showing by actual transactions the result of its application and stating their objections to this method of constructing rates. These figures and observations should be filed with the Commission in writing and a copy served upon the complainant, which, within 30 days, may file with the Commission its written answer thereto.

The complainant may, on or before September 1 next, file with the Commission a list of the stations in Iowa which should in its opinion be included in each one of the five zones herein prescribed. A copy of this should be at the same time served upon the several defendants who operate in the state of Iowa, who, within 30 days, may file their objections thereto with this Commission.

28 I. C. C.

## APPENDIX.

Rates in cents per 100 pounds.

Distance, in miles.	Class.									
	1	2	3	4	5	A	B	C	D	E
5	13	11	9	7	5	5	5	4	3	3
10	16	13	11	8	6	6	6	5	4	3
15	19	16	13	10	8	8	7	6	5	4
20	22	18	15	11	9	9	8	7	6	4
25	24	20	16	12	10	10	8	7	6	5
30	26	22	17	13	10	10	9	8	7	5
35	28	24	19	14	11	11	10	8	7	6
40	30	25	20	15	12	12	11	9	8	6
45	31	26	21	16	12	12	11	9	8	6
50	32	27	22	16	13	13	11	10	8	6
55	33	28	22	17	13	13	12	10	8	7
60	34	29	23	17	14	14	12	10	9	7
65	35	29	24	18	14	14	12	11	9	7
70	36	30	24	18	14	14	13	11	9	7
75	37	31	25	19	15	15	13	11	9	7
80	38	32	25	19	15	15	13	11	10	8
85	39	33	26	20	16	16	14	12	10	8
90	40	34	27	20	16	16	14	12	10	8
95	41	34	27	21	16	16	14	12	10	8
100	42	35	28	21	17	17	15	13	11	8
110	44	37	29	22	18	18	15	13	11	9
120	46	39	30	23	18	18	16	14	12	9
130	48	40	32	24	19	19	17	14	12	10
140	50	42	33	25	20	20	18	15	13	10
150	52	43	34	26	21	21	18	16	13	10
160	54	45	36	27	22	22	19	16	14	11
170	56	47	37	28	22	22	20	17	14	11
180	58	49	38	29	23	23	20	17	15	12
190	60	50	40	30	24	24	21	18	15	12
200	62	52	41	31	25	25	22	19	16	12
220	65	55	43	33	26	26	23	20	16	13
240	68	57	45	34	27	27	24	20	17	14
260	71	60	47	36	28	28	25	21	18	14
280	74	62	49	37	30	30	26	22	19	15
300	77	65	51	39	31	31	27	23	19	15
320	80	67	53	40	32	32	28	24	20	16
340	83	70	55	42	33	33	29	25	21	17
360	86	72	57	43	34	34	30	26	22	17
380	89	75	59	45	36	36	31	27	22	18
400	92	77	61	46	37	37	32	28	23	18
420	95	80	63	48	38	38	33	29	24	19
440	98	82	65	49	39	39	34	29	25	20
460	101	85	67	51	40	40	35	30	25	20
480	104	87	69	52	42	42	36	31	26	21
500	107	90	71	54	43	43	37	32	27	21
520	110	92	73	55	44	44	39	33	28	22
540	113	95	75	57	45	45	40	34	28	23
560	116	97	77	58	46	46	41	35	29	23
580	119	100	79	60	48	48	42	36	30	24
600	122	102	81	61	49	49	43	37	31	24
620	125	105	83	63	50	50	44	38	31	25
640	128	108	85	64	51	51	45	38	32	26
660	131	110	87	66	52	52	46	39	33	26
680	134	112	89	67	54	54	47	40	34	27
700	137	115	91	69	55	55	48	41	34	27
720	140	118	93	70	56	56	49	42	35	28
740	143	120	95	72	57	57	50	43	36	29
760	146	123	97	73	58	58	51	44	37	29
780	149	125	99	75	60	60	52	45	37	30
800	152	128	101	76	61	61	53	46	38	30

No. 5060.

JOHN TAYLOR DRY GOODS COMPANY

v.

MISSOURI PACIFIC RAILWAY COMPANY.

---

No. 5060 (Sub-Nos. 1 to 57).

JOHN TAYLOR DRY GOODS COMPANY ET AL.

v.

MISSOURI PACIFIC RAILWAY COMPANY ET AL.

---

Nos. 5200 and 5200 (Sub-No. 1).

WHEELER & MOTTER MERCANTILE COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

---

Nos. 5283 and 5283 (Sub-No. 1).

HICKS-FULLER-PIERSON COMPANY ET AL.

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COM-  
PANY ET AL.

---

Nos. 5286 and 5286 (Sub-Nos. 1 to 3).

M. E. SMITH & COMPANY ET AL.

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COM-  
PANY ET AL.

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*Submitted April 3, 1913. Decided June 3, 1913.*

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1. Complainants ask for a carload rating upon cotton piece goods originating in New England and the south for the transportation from points on the Mississippi River to points on the Missouri River. Upon the facts disclosed by the record; *Held*, That to establish a carload rating here and not elsewhere would be to throw out of balance the relation between



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Distance, in miles.	Class.									
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20.....	22	18	15	11	9	9	8	7	6	4
25.....	24	20	16	12	10	10	8	7	6	5
30.....	26	22	17	13	10	10	9	8	7	5
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40.....	30	26	20	15	12	12	11	9	8	6
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55.....	33	28	22	17	13	13	12	10	8	7
60.....	34	29	23	17	14	14	12	10	9	7
65.....	35	29	24	18	14	14	12	11	9	7
70.....	36	30	24	18	14	14	13	11	9	7
75.....	37	31	25	19	15	15	13	11	9	7
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*Submitted April 3, 1913. Decided June 3, 1913.*

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1. Complainants ask for a carload rating upon cotton piece goods originating in New England and the south for the transportation from points on the Mississippi River to points on the Missouri River. Upon the facts disclosed by the record; *Held*, That to establish a carload rating here and not elsewhere would be to throw out of balance the relation between

rates on this important commodity in all parts of the country. There are weighty reasons why cotton piece goods should be given a carload rating, but if this is to be done it should be in some more comprehensive way than by an order in the present proceeding. Prayer denied.

2. The present any-quantity rate of 35 cents per 100 pounds upon cotton piece goods originating in New England and the south for the transportation from points on the Mississippi River to points on the Missouri River is unjust and unreasonable to the extent that it exceeds 32 cents.
3. Rates on cotton piece goods to Sioux City, Iowa, from southern mills seem to be somewhat higher than those to other points upon the Missouri River; *Held*, That the same reduction should be made to Sioux City in all cases as is made to other Missouri River points.
4. Under all the circumstances of this case, reparation should be awarded complainants in amount of the difference between the 35-cent rate and the 32-cent rate on their shipments of cotton piece goods since December 31, 1911, only, the date of the Commission's decision in the *Warnock case*, 21 I. C. C., 546.
5. Complainants in No. 5060 contend that, under the tariff of October 26, 1910, they are entitled to reparation in the amount of the difference paid under the 35-cent rate and the 30-cent rate, but that contention is denied, because the claim is not based upon the reasonableness of the rate charged. It involves simply a question of tariff construction. *Wheeler & Motter case*, 20 I. C. C., 141, cited and followed.

*H. G. Wilson* for John Taylor Dry Goods Company.

*H. G. Krake* for St. Joseph Commerce Club, Wheeler & Motter Mercantile Company, and others.

*G. T. Bell* for Sioux City Traffic Bureau, Hicks-Fuller-Pierson Company, and others.

*E. J. McVann* for Omaha Traffic Bureau, M. E. Smith & Company, and others.

*H. G. Wilson* and *J. H. Atwood* for Kansas City Transportation Bureau.

*J. L. Coleman* for defendants.

*F. G. Wright* and *H. G. Herbel* for Missouri Pacific Railway Company.

*C. C. Wright* for Chicago & North Western Railway Company.

*W. F. Dickinson* and *W. T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*O. W. Dynes* and *J. M. Davis* for Chicago, Milwaukee & St. Paul Railway Company.

*Robert Dunlop* and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

*E. H. Dulaney* for Louisville & Nashville Railroad Company.

*R. Walton Moore* and *George Butler* for Alabama Great Southern Railroad Company and others.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*R. V. Fletcher, A. P. Humburg, and George Butler* for Illinois Central Railroad Company.

*J. W. Allen* for Missouri, Kansas & Texas Railway Company.

*R. V. Fletcher and A. P. Humburg* for Yazoo & Mississippi Valley Railroad Company.

#### REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

The complainants in the above four cases are wholesalers of dry goods, doing business at Kansas City, St. Joseph, Omaha, and Sioux City. The questions presented by the complaints are identical and are:

First. Shall a carload rating be established upon cotton piece goods between the Mississippi and the Missouri rivers?

Second. If not, is the present any-quantity rate reasonable?

#### SHALL A CARLOAD RATING BE ESTABLISHED?

The claim of the complainants to a carload rating is based upon a showing of fact that cotton piece goods could and would move in carload lots if the inducement existed. Statements introduced in evidence giving the points at which and the quantities in which the complainants have purchased their supplies leave no doubt that if there were in effect a carload rate many carloads of cotton cloths would move annually from New England and southern mills to the warehouses of these complainants upon the Missouri River. This being so, the complainants insist that a carload rate must be accorded as a matter of right, citing as authority the very recent opinion of this Commission *In the Matter of the Suspension of Western Classification No. 51*, 25 I. C. C., 442, where the Commission in discussing the subject of carload rates at page 464 said:

The conclusion in which argumentative considerations relating to this question reach a point of equilibrium appears to be this, that a carload rating should be established for a commodity when that commodity can be offered for shipment in carload quantities, unless public interests or other valid considerations require the contrary.

But the Commission here states that the offering of a carload quantity entitles the shipper to a carload rating only in case that the public interest or other valid considerations do not require the contrary. It has been the uniform holding of this Commission that each case must be considered upon its own merits and that in determining whether a carload rating should be accorded not merely the physical but the commercial and economic aspects must be considered. This will best appear by a brief reference to some of the principal cases.

In *Brownell v. C. & C. M. R. R. Co.*, 5 I. C. C., 638, the complainant, who was a shipper of eggs in large quantities, insisted that when he presented for shipment an entire carload he was entitled to a better rate per 100 pounds than his competitor, who only presented a part carload. The Commission held otherwise, refusing to disturb the any-quantity rate in effect. The ground of its holding clearly appears in the following excerpt from the opinion, beginning at page 651:

The unit of quantity that carriers have universally employed for the purpose of rate making is the 100 pounds. The purpose of a classification is to group the various articles of commerce into general classes upon which the rate per 100 pounds shall apply. Classification of carloads in a lower class than is given to the same article in a less quantity was at first merely incidental to the business of transportation, and the practice has not yet become so general that a lower carload class must be given to every article which may be offered in carload quantities. The justice of the demand depends upon the facts in each case; it can not be determined by an inflexible general rule. It is a sound rule for carriers to adapt their classifications to the laws of trade; that is, as before stated, if an article moves in sufficient volume and the demands of commerce will be better served, it is reasonable to give it a carload classification. *Thurber's case, supra*. The large dealers, who now control more than three-fourths of the business of gathering and shipping eggs to the large cities, can not be said to suffer material damage from the competition of small shipments under the same rate to the same market. Beyond giving a practical monopoly to the large dealers, it does not appear that any other portion of the public would be benefited by a lower class for carloads of eggs. If the railroads were not willing to gather the small lots of eggs and carry them direct to a general market, there might be some ground for holding that the volume of egg traffic, the demands of trade, and the interests of local dealers and producers are such that a lower carload classification is desirable; but the special facilities furnished local shippers for putting their eggs in large markets in as fresh state as possible are, in our view, of greater benefit to producers, local dealers, city dealers, and consumers than any other method of gathering and shipping which has yet been devised for this or any other perishable food product; and such advantage to the general public should not be interfered with or its continuance in any way discouraged unless a more satisfactory method of reaching the markets can be established in its stead.

A later case in which this same question was elaborately discussed is *Planters Compress Co. v. C., C., & St. L. R. R. Co.*, 11 I. C. C., 382. The complainant was the owner of an invention by which cotton could be compressed in what was known as the round bale to a much greater density than in the ordinary square bale. The square bale loaded in the standard box car from 25,000 to 35,000 pounds, while the round bale would load from 45,000 to 75,000 pounds. The complainant claimed that if a shipper presented cotton in such form that the carload lading could be doubled and the cost of transportation correspondingly diminished, it was entitled as a matter

of right to a better rate. The Commission held that no such right existed and declined as a matter of discretion to disturb the existing rates.

An even stronger case was *Duncan & Co. v. N., C. & St. L. Ry.*, 16 I. C. C., 590. Grain and grain products are almost uniformly shipped in carload quantities, and in most parts of the country carload rates are applied to these commodities which are much lower than the less-than-carload rates. In southern classification territory, however, these commodities have always moved under an any-quantity rate. The complainants were dealers in grain and grain products at Atlanta, and they insisted, among other things, that the defendant should establish a carload rate less than the l. c. l. rate so that they might move their supplies in at the lower carload rate, thereby obtaining an advantage over their competitors who were mainly located upon the Ohio River, in territory immediately contiguous to Atlanta. The Commission declined to establish the carload rating mainly upon the ground that business conditions in that territory had adapted themselves to the existing any-quantity rates and that the settled policy of the railroad commissions in the various states involved was in favor of the maintenance of such rates.

In *Bentley & Olmsted v. L. S. & M. S. Ry. Co.*, 17 I. C. C., 56, we declined to establish a carload rating on boots and shoes from New England points of production to Des Moines, Iowa, saying that these articles generally moved under an any-quantity rate and that no sufficient reason was shown why that rule should be departed from in that particular instance. Boots and shoes, like cotton piece goods, would move in carload quantities were there a carload rating.

The Commission has always recognized the propriety of carload ratings. It has in many cases established carload and less-than-carload rates upon the same commodity, but whether a carload rating should be accorded in a particular instance depends not only upon whether that commodity is offered for shipment in carload quantities, but also upon other considerations. The shipper tendering a carload of freight is not of necessity entitled to a more favorable rate than one who tenders 100 pounds of the same commodity. If we are to hold that the carload must be given a lower rate per 100 pounds than the smaller quantity for the sole reason that the cost of the service to the carrier is less, then by the same reasoning must we hold that the train lot shall receive a better rate than the carload.

We come, therefore, to a consideration of the facts in the case before us. Cotton piece goods will readily load to a minimum of 30,000 pounds or over in standard cars. These goods are commercially handled by the complainants and other wholesalers in such

a way that they could be readily consolidated into carloads. Undoubtedly the cost of transporting these goods from the mill of production to the final consumer is less if they are moved to the Missouri River in carloads and thence distributed in smaller quantities. Upon the other hand, to accord to these complainants a carload rate materially lower than the l. c. l. rate would be to give them such an advantage over their competitors upon the Atlantic seaboard and in other sections as would virtually appropriate to them territory contiguous to the Missouri River and thereby deprive that territory of the benefit of the competition which it now enjoys. Ordinarily such rules and practices of transportation should be enforced as make for the greatest efficiency and economy, but it is by no means certain in this case whether the interest of the entire public would be subserved by a change of the present system.

Broadly speaking, cotton piece goods have never moved and do not now move under carload rates. Water competition between the Atlantic seaboard and Pacific coast terminals has forced a carload rate from eastern mills to the Pacific coast. This Commission, in the *Spokane case*, 19 I. C. C., 162, recognizing the competitive situation which existed between the Pacific coast cities and interior cities like Spokane, established a carload rating from eastern mills to Spokane. The coarser weaves of cotton cloths like ducks, denims, and drillings are used extensively in the manufacture of tents, awnings, and cheaper grades of clothing. They are in that aspect in the nature of raw material and have been in several instances accorded carload rates for that reason. The Commission found such rates in effect from the east to Salt Lake City, and continued similar rates in *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.*, 19 I. C. C., 218. Similar rates have for some time been maintained by the carriers to Denver, but aside from these and possibly a few analogous instances cotton piece goods uniformly move upon an any-quantity rate. In this case we are considering merely the rate between the Mississippi and Missouri rivers, a distance of less than 300 miles. To establish a carload rating here and not elsewhere would be to throw out of balance the relation between rates on this important commodity in all parts of the country, which we might well hesitate to do. In *Kindel v. B. & A. R. R. Co.*, 11 I. C. C., 495, we declined to establish a carload rating on cotton piece goods from New England to Denver, and on the whole we think that ruling should be followed here. There are weighty reasons why cotton piece goods should be given a carload rating, but if this is to be done it should be in some more comprehensive way than by an order in the present proceeding. The prayer of the complainants for the carload rate will therefore be denied.

## IS THE PRESENT ANY-QUANTITY RATE REASONABLE?

The any-quantity rate now in effect between the Mississippi and Missouri Rivers is 35 cents, and this has been the rate since 1894. It is named as a commodity rate, but was from 1894 down to the taking effect of our order in the *Burnham-Hanna-Munger case*, 14 I. C. C., 299, the same as the third-class rate. By that decision rates between the rivers upon the numbered classes when applied to business originating at the Atlantic seaboard were reduced by various amounts, beginning with 9 cents, first class. The third-class rate established in that case was 30 cents. Subsequently, in the *Warnock case*, 21 I. C. C., 546, the decision of the Commission in the *Burnham-Hanna-Munger case* was reconsidered and a series of class rates established upon business originating east of the Indiana-Illinois state line, beginning with 55 cents, first class. The third-class rate fixed by that case was 32 cents, which is still in effect.

The complainants in the *Burnham-Hanna-Munger case* were large shippers of cotton piece goods, and they assumed upon the promulgation of our decision in that proceeding that the rate upon this commodity would automatically follow the reduction in the third-class rate; but the Commission held in *Wheeler & Motter Mercantile Co. v. C. B. & Q. R. R. Co.*, 20 I. C. C., 141, that inasmuch as the 35-cent rate upon cotton piece goods was a commodity rate it would not be affected by our decision reducing the third-class rate. Thereupon this complaint was filed, and the real question here is whether the rate on cotton piece goods shall be reduced to 32 cents, the present third-class rate, or whether it should remain where it is.

In western classification dry goods and cotton piece goods are rated as first class, and the defendants contend that this is the proper classification, which has only been departed from under strain of competitive conditions.

Generally speaking, dry goods are first class in all territories, while cotton piece goods usually take a lower rate. In western trunk line territory, which embraces the territory in question, cotton piece goods are carried as third class, and the complainants insist that if first class be the correct rating for dry goods, then cotton piece goods ought not to be classified higher than third class.

In support of this contention they show the comparative weight per cubic foot, the comparative value per cubic foot and per hundred pounds of cotton piece goods and dry goods, the greater liability to damage of dry goods, and from the facts given deduce the conclusion contended for.

Without attempting to restate here the figures, it may be said that there is a marked difference in the expense of handling dry



goods and cotton piece goods. If cost of service were to be alone considered, including liability for loss and damage, it might well be found that a third-class rate upon cotton piece goods would be fairly equivalent to a first-class rate on dry goods. The same conclusion might be reached if reference were had entirely to the value of the service. Dry goods are of much greater value than cotton piece goods. They are not handled upon so narrow a margin. The freight rate is nothing like as significant, so that on the whole the complainants who deal in all classes of dry goods and cotton piece goods can well afford to pay a substantially higher freight rate upon their dry goods than upon their cotton piece goods.

While cotton piece goods are classified as first class under the western classification, they take a lower rating elsewhere. In southern classification they are fourth class, in official classification 15 per cent less than second class, in western trunk line territory, over which western classification prevails, this commodity is by exception rated as third class.

This Commission has never approved, but, upon the contrary, has several times disapproved, of the application of first-class rates to the movement of cotton piece goods. In *Kindel v. B. & A. R. R. Co.*, 11 I. C. C., 495, the rate on cotton piece goods from New England to Denver was under consideration. It appeared that this rate was constructed by combination of rates to the Mississippi River, from the Mississippi River to the Missouri River, and from the Missouri River to Colorado common points. The rate from the Missouri River was the first-class rate, and speaking of this the Commission said, at page 509:

But from Missouri River points the rates in 1889 were \$1.60, the present rates are \$1.25, or first-class rates on cotton piece goods. Everywhere else cotton piece goods are carried at lower than first-class rates; everywhere else that first-class rates have been reduced cotton piece goods have enjoyed a similar reduction, sometimes more, sometimes less; but between these points, by a singular exception, cotton piece goods are denied any differential below first-class rates, though such a differential prevails in practically all other localities, save west of the Missouri River.

The third-class rate then in effect from New England to Denver was \$1.73. The rate established by the Commission upon cotton piece goods was \$1.50.

In the *Salt Lake case*, 19 I. C. C., 218, class and commodity rates were established from the Missouri River to Salt Lake City. The third-class rate was fixed at \$1.42, while the any-quantity rate on cotton piece goods was \$1.25. A carload rate of 88 cents was applied to ducks and denims, with a minimum of 30,000 pounds.

In the *Spokane case*, *supra*, the third-class rate from the Missouri River was fixed at \$1.83, while the less-than-carload rate on cotton

piece goods was \$1.75 and the carload rate \$1.25. Upon ducks and denims the l. c. l. rate was fixed at \$1.60; c. l. \$1.10.

If we are to adhere to the rule adopted in all these cases, the rate applied to cotton piece goods in the case before us ought not to exceed third class.

In the *Warnock case*, *supra*, as the result of mature consideration we finally established a third-class rate of 32 cents, applicable to traffic originating east of the Indiana-Illinois state line, as compared with a third-class local rate of 35 cents. In so doing we recognized the principle that the through rate from eastern destinations to the Missouri River ought to be somewhat less than the combination upon the Mississippi River. This principle was applied in that case not only to the numbered classes but also to the lettered classes. It is difficult to conceive of any reason which could have controlled our action with respect to those class rates which would not be equally influential as to this rate on cotton piece goods.

While the rate on cotton piece goods between the Missouri and Mississippi rivers has always been a commodity rate, and never governed by the classification, strictly speaking, still for the last quarter of a century that rate has been the same as the third-class rate and has always fluctuated with the third-class rate. By the present tariffs the third-class rate is applied in all that territory except as to this movement between the rivers.

Considering this whole situation it is our opinion that the present rate of 35 cents as applied to shipments originating east of the Illinois-Indiana state line is unjust and unreasonable, that the entire through rate is unjust and unreasonable, and that this rate between the rivers ought not to exceed 32 cents. While no good reason is apparent why the third-class rate should not be applied to this traffic between the rivers as well as to the movement of cotton piece goods elsewhere in this same territory, we shall not require any change in classification but shall permit a statement of the reduced charge as a commodity rate if desired.

Rates from New England mills to the Missouri River are made by combination upon the Mississippi River so that our order reducing the 35-cent rate when applied to business originating at eastern points gives to the complainants the full measure of relief to which they are entitled as to that traffic. It appears, however, that a considerable part of the cotton piece goods handled by them originate at southern mills, from which the movement is under a joint through rate. It was admitted that this rate, while published as a joint rate, was really made up of the rate established by southern carriers up to the Mississippi River, plus the 35-cent rate between the rivers, and that a reduction of the inter-river rate should carry with it a corresponding reduction of the joint rate.

The southern carriers which join in this rate are made parties to this proceeding and were represented upon the hearing, but took no part in the defense, it being understood that the controversy related solely to the rate between the rivers. Under these circumstances we are of the opinion that the joint through rates from these southern mills which are put in issue by the complaint are unjust and unreasonable by 3 cents per 100 pounds, and that rates not exceeding those less than the present rates by that amount should be established for the future.

Rates to Sioux City from southern mills seem to be somewhat higher than those to other points upon the Missouri River. We are of the opinion that the same reduction should be made to Sioux City in all cases as is made to other Missouri River points.

These complainants claim reparation with respect to shipments which moved within two years previous to the filing of their complaint.

In the *Burnham-Hanna-Munger case* we allowed reparation with respect to shipments covered by our order moving subsequent to the effective date of that order. It will be remembered that owing to legal proceedings the rates ordered did not take effect until October 26, 1910, shortly before the expiration of the order itself. Reparation in that case was confined strictly to commodities covered by our order. In the *Warnock case, supra*, we finally established by order effective December 31, 1911, the present scale of class rates which is now in effect. That decision first established a third-class rate of 32 cents applicable to traffic originating east of the Indiana-Illinois line. We hold under all the circumstances of this case that the rate of 35 cents paid by the complainants up to December 31, 1911, has not been shown to be unjust and unreasonable, but that since that date any exaction above 32 cents has been unjust and unreasonable, and reparation will be awarded accordingly.

As already noted, the Commission reduced the third-class rate by its decision in the *Burnham-Hanna-Munger case* from 35 to 30 cents, and this reduction was made effective by tariff October 26, 1910. This tariff continued in effect until December 31, 1911, when it was supplanted by tariff filed in accordance with our order in the *Warnock case*. The complainants in No. 5060 contend that under the tariff of October 26 the rate legally applicable to the movement of cotton piece goods originating in New England from the Mississippi River to the Missouri River was 30 cents per 100 pounds, and that they are entitled to reparation in the amount of the difference paid under the 35-cent rate and the 30-cent rate which should have been collected.

This claim is not based upon and does not put in issue the reasonableness of the rate charged. It involves simply a question of tariff construction. The same question was presented and decided by the Commission in *Wheeler & Motter Mercantile Co. v. C., B. & Q. R. R. Co.*, 20 I. C. C., 141, adversely to the contention of the complainant. A motion for rehearing in that case was made and denied. That question must therefore be regarded as finally disposed of.

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No. 4452.

NATIONAL LUMBER EXPORTERS' ASSOCIATION

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY ET AL.

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*Submitted April 22, 1913. Decided June 3, 1913.*

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Rate of 15 cents per 100 pounds for the transportation of hardwood lumber from Pine Bluff and Dermott, Ark., to New Orleans, La., when for export, not found unreasonable.

*H. M. Armistead and Ashley Cockrill* for complainants.

*M. L. Clardy, H. G. Herbel, and F. G. Wright* for St. Louis, Iron Mountain & Southern Railway Company and Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

This complaint attacks rates upon hardwood lumber from points in Arkansas to New Orleans, when for export. While the complaint is professedly brought in behalf of all the members of the association exporting lumber from the territory in question, only two firms were represented upon the hearing, the rates specifically mentioned being those from Pine Bluff and Dermott. These export rates from Arkansas points are stated in groups, and run from 15 to 18 cents per 100 pounds. Pine Bluff and Dermott are both in the 15-cent group. The short-line distance from Dermott is 348 miles; from Pine Bluff 414 miles.

23 I. C. C.

The complainants rely upon evidence of three kinds. It is shown, in the first place, that at the present time only the higher grades of lumber are manufactured. The best part of the tree is brought to the mill and sawed, the balance being left in the forest to decay. The complainants urge that such rates should be established as would enable lumbermen to market the poorer qualities of lumber, thus preventing the waste which now results.

The maximum reduction suggested is 3 cents per 100 pounds, equivalent to about \$1.20 per 1,000 feet for this hardwood lumber. While this is a significant amount and might be a fair profit of itself in the handling of lumber, it is doubtful whether a reduction in that amount would have the effect of bringing into use the poorer quality which is now left in the forest.

Moreover, these rates are for export. The testimony shows that this export lumber is worth from \$40 to \$60 per 1,000 feet at the mill, while the poorer grades are worth from \$10 to \$15 per 1,000 feet. The lower grades of lumber can not be exported, and for this reason a reduction in this export rate, while benefiting the complainants in comparison with their competitors, would not substantially change the character of the business as now conducted. If these logs of inferior quality, which are now suffered to waste, are to be put to any use, some domestic market must be found, and this will not be by a reduction in the rate for foreign consumption.

The second claim of the complainants is that rates from Dermott and Pine Bluff to Louisiana are so high in comparison with corresponding rates from Memphis that the complainants located at these Arkansas points can not successfully compete with dealers at Memphis.

Memphis has long been an extensive lumber manufacturing and handling center. The supply of logs in the vicinity of Memphis has been exhausted by these operations, so that to-day supplies for the Memphis mills must be drawn from considerable distances. These logs come in part by water and in part by rail. Upon the other hand, Pine Bluff and Dermott are located in close proximity to the forest from which their logs are drawn. It was suggested that the rates on logs into Memphis from points in Arkansas were unduly low in comparison with those to the mills of the complainants at Dermott and Pine Bluff, and an examination of the tariffs indicates that in some instances there may have been a discrimination of this sort, which has, however, been corrected. As the tariffs now stand, rates on rough logs into Memphis are as high, mile for mile, as those to Pine Bluff and Dermott, with the result that the complainants pay much less for their logs than do their competitors at Memphis. It is by no means certain that the advantage of the complainants in the price of

their logs does not more than offset the advantage of the Memphis manufacturer in his rate upon the manufactured product. It appeared that one of the complainants had formerly been located at Memphis, but had discontinued his business at that point, purchased large tracts of timber in Arkansas, and moved his operations to this state.

In *Thompson Lumber Co. v. I. C. R. R. Co.*, 13 I. C. C., 657, the Commission condemned a rate of 12 cents from Memphis to New Orleans and established a rate of 10 cents. The distance from Memphis via the Illinois Central, the short line, is approximately 400 miles, somewhat greater than the average distance from Pine Bluff and Dermott. The complainants insist that if 10 cents is a fair rate from Memphis then 15 cents is an excessive rate from their mills, and this is the third and the substantial claim which they present.

It has been noted that these rates from Arkansas points are stated by groups, and the average distance from points in the 15-cent group is somewhat greater than from the two points involved, but certainly not in excess of 450 miles. The defendants insist that a rate of 15 cents for this distance from points in Arkansas to New Orleans is no more than a rate of 10 cents from Memphis, for the reason that the expenses of construction and maintenance and the conditions of operation upon their lines to the west of the Mississippi River are much less favorable than those upon the Illinois Central to the east of that river. It was said in a general way that grades were harder, that traffic was much less dense, that climatic conditions were more severe, and that in every respect the cost of construction, maintenance, and operation on these lines greatly exceeded that upon the Illinois Central. All this is extremely indefinite and would hardly sustain the position of the defendants were the issue still an open one; but apparently the question here presented has been already disposed of by the very recent decision of this Commission in *National Lumber Exporters' Asso. v. K. C. S. Ry. Co.*, 25 I. C. C., 78. In that case export rates on hardwood lumber from points in the state of Louisiana to New Orleans were before us. The points of production involved in that case were located upon the lines of the St. Louis, Iron Mountain & Southern in the northern part of Louisiana between the points of production here involved and New Orleans. The rate was 14 cents per 100 pounds for an average distance of 290 miles. The domestic rate from the same mills to New Orleans as established by the railroad commission of Louisiana was 10 cents per 100 pounds, and the contention of the complainants was that no higher rate could reasonably be applied when the lumber was for export. The Commission held that the 14-cent rate was reasonable and declined, upon motion for rehearing, to disturb that conclusion.

The traffic which moves under the 15-cent rate before us passes through these points from which the 14-cent rate applies. The distance is nearly 100 miles greater. All the incidents of the traffic are the same. It is impossible to condemn the 15-cent rate from these Arkansas points unless we first retract our approval of the 14-cent rate from the intermediate Louisiana points. This we are not disposed to do under the circumstances. That case was fully tried, and we must accept the final conclusion as correct.

To avoid any misconception for the future, an additional word should perhaps be said. The complainants point out that their rates not only to New Orleans but in all other directions are too high as compared with Memphis and all other competing localities. We consider here merely the export rates to New Orleans without reference to any other rate. The Commission now has under advisement in a proceeding instituted upon its own motion lumber rates from this whole territory to northern markets, and the same question is presented in one or more complaints brought by private parties. If this should result in a breaking up of the broad groups which now obtain in this section and in a readjustment of lumber rates, the present finding should not be held to debar the mills of the complainants from any benefit which they might otherwise obtain from such readjustment.

The complaint will be dismissed.

28 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 204.

RATES ON COTTONSEED AND ITS PRODUCTS.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF COTTONSEED AND COTTONSEED PRODUCTS FROM POINTS IN TEXAS TO NEW ORLEANS, LA.

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*Submitted May 20, 1913. Decided June 16, 1913.*

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For reasons given in the report the restriction to certain routes of the application of the export rate of 18½ cents per 100 pounds on cottonseed and its products from Texas points to New Orleans found not unreasonable. Order of suspension vacated.

*A. F. Barnett* for protestants.

*H. G. Herbel* and *F. G. Wright* for Texas & Pacific Railway Company.

*M. L. Clardy*, *H. G. Herbel*, and *F. G. Wright* for St. Louis, Iron Mountain & Southern Railway Company and Missouri Pacific Railway Company.

*Robert Dunlop* and *T. J. Norton* for Gulf, Colorado & Santa Fe Railway Company and Texas & Gulf Railway Company.

*R. Walton Moore*, *R. V. Fletcher*, and *M. P. Callaway* for Illinois Central Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; and Yazoo & Mississippi Valley Railroad Company.

*F. H. Wood* for St. Louis & San Francisco Railroad Company and others.

REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

The item under suspension (No. 1818) is found in F. A. Leland's supplement No. 8 to Southwestern lines tariff 12-Q, I. C. C. No. 980, effective January 2, 1913, which reads as follows:

Rates from Texas points to New Orleans, La., will not apply in connection with the Illinois Central Railroad or the Yazoo & Mississippi Valley Railroad except from points on the Sunset Central lines.

The effect of this is to restrict to certain routes the application of the export rate of 18½ cents per 100 pounds on cottonseed and its



products from Texas points to New Orleans. The supplement containing this item was suspended by the Commission on December 27, 1912, until May 2. On May 4 it was again suspended until August 30.

The Southport Mill, which is the name of a concern operating a mill at Southport, La., at which is ground cottonseed cake, filed a protest against the taking effect of this supplement, stating that the closing of these gateways through which most of its business moved would mean the paying by it of an additional switching charge of \$5 per car. A hearing has been had, and the facts appear to be substantially these:

The parties interested in the Southport Mill prior to 1909 were engaged in sacking cottonseed cake on the docks owned by the Texas & Pacific Railway Company at Westwego, which is across the river from New Orleans. On being notified by the Texas & Pacific Railway that their sacking interfered with the conduct of its other business, they moved from the pier and located their present plant on land owned by the Yazoo & Mississippi Valley Railroad Company, in Southport, on the other side of the Mississippi, which is some 5 or 6 miles from New Orleans proper. At the time of locating in Southport the mill company expected to draw its supply of cottonseed cake from points east of the river, but owing to the ravages of the boll weevil, it was forced to go west into Texas for its supply. The result has been that it has continued to draw from Texas practically all of the cake ground by it. When the mill was first started the rate of 18½ cents did not apply at points east of the Mississippi, but within about five months thereafter the rate was made applicable to New Orleans and the complainant has received the benefit of it, it being considered that Southport was within the switching limits of New Orleans.

Since the mill first began operations its business has increased considerably. In 1910-11 it used 6,500 tons of cottonseed, while in 1912-13 the consumption was 35,000 tons. Seventy-three per cent of this comes from points located on these Texas lines, and on this amount will the mill company be compelled to pay the additional charge of \$5 per car which, it claims, will result in closing its mill, since it is in competition with mills located at Port Arthur and Galveston, which pay no switching charge and possess still other advantages over the complainant. The general manager for the mill company testified that there would be 60 cents a ton in favor of Port Arthur and 50 cents in favor of Galveston.

When the rate of 18½ cents was made applicable to New Orleans, it was published to apply via Shreveport and Vicksburg, and also through Baton Rouge. Traffic moving by way of Shreveport is delivered to the Vicksburg, Shreveport & Pacific Railway, which road

in turn delivers it to the Yazoo & Mississippi Valley at Vicksburg. Under this arrangement the lines east of Shreveport have received 10 cents as their division, leaving the balance to the lines west. In addition to the division received by the Yazoo & Mississippi Valley, it has performed a switching service from the mill to ship side, for which it has received \$6 per car. This arrangement was in effect from 1909 until the fall of 1912, when this supplement was filed, apparently at the instance of the Texas & Pacific. This road alleges that the present routing is inequitable since it reaches New Orleans directly with its own rails, and should not be expected to deliver this traffic to the Vicksburg, Shreveport & Pacific at Shreveport, thereby short-hauling itself. It furthermore insists that the division received by it is too small.

From Shreveport the Texas & Pacific has a line running due west to El Paso, a distance of 523 miles. Seventy-five miles north of Shreveport is Texarkana, which is reached by the Texas & Pacific, and from this point there is a parallel line extending west to Sherman, a distance of 151 miles. From Sherman the line runs southwest some 93 miles, connecting with the main line at Fort Worth. It is this territory in Northern Texas served by the Texas & Pacific and connecting carriers from which the Southport mill draws most of its supply. The Texas & Pacific naturally controls this traffic since, with the exception of the Missouri, Kansas & Texas, it is the only carrier reaching the territory in question from Shreveport with its own rails. It is 326 miles from Shreveport to New Orleans via the Texas & Pacific and 407 via the Vicksburg, Shreveport & Pacific and the Yazoo & Mississippi Valley.

The real question therefore is this: Can the Texas & Pacific, which hauls this traffic to Shreveport, be compelled to deliver it to the Vicksburg, Shreveport & Pacific, or may it insist upon carrying it by its own rails to New Orleans? The Texas & Pacific insists that the route via Vicksburg being 81 miles longer is a circuitous one and calls our attention to several cases in which the Commission has held that traffic should not be forced into roundabout and unnatural routes, but the question here is really upon the construction of the statute.

Section 15 of the act to regulate commerce provides that the Commission in establishing a through route shall not require any company without its consent to embrace in such route substantially less than the entire length of its railroad. This proceeding differs from one brought to first compel the opening of a new gateway and the making of a joint rate in that these carriers have voluntarily maintained these joint rates and through routes for something like four years, and we are now asked to continue them.

If as an original proposition we were asked to establish a through route and joint rate by way of Shreveport and Vicksburg, we should undoubtedly find this route to be an unnatural one and should hold under the statute that we had no right to deprive the Texas & Pacific of its haul from Shreveport to New Orleans. The same considerations must control here, where we are asked to continue this route. We are therefore of the opinion that under the circumstances the carriers are justified in closing this gateway.

While it appears that traffic might move by the Missouri, Kansas & Texas through Shreveport and through Meridian and Baton Rouge by other lines, no importance was attached to these circumstances upon the hearing, and we do not consider them here. Evidently Meridian is an unnatural gateway and Baton Rouge would present apparently the same question as Shreveport. The Missouri, Kansas & Texas might and probably does deliver its traffic to the Texas & Pacific before reaching Shreveport.

The complainant insists that the payment of an additional switching charge of \$5 will be a serious handicap in the conduct of its business. If the complainant mill is located within the switching limits of New Orleans, this charge should perhaps be absorbed by the Texas & Pacific. It is possible that a joint rate to the mill ought to be established via the Texas & Pacific and the Illinois Central through New Orleans, but neither of these questions is considered here; if the complainant conceives that it is being unlawfully dealt with, it can raise the issue by complaint.

The order of suspension will be vacated.

28 I. C. C.

No. 5391.

GERMAN KALI WORKS, INCORPORATED,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted May 10, 1913. Decided June 9, 1913.*

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1. Present classification of sulphate of potash and muriate of potash as fifth class in carloads in the western classification not found unreasonable, and the classification of kainit and muriate of potash as fourth class in less than carloads is proper; but the less-than-carload rating on sulphate of potash should be fourth class instead of third class.
2. The fifth-class rating on sulphate of potash and muriate of potash in carloads not found unjustly discriminatory as compared with class E on kainit and other fertilizers in carloads.
3. Muriate of potash, sulphate of potash, kainit, double manure salts, manure salts, sylvinit, and hartsalz may be shipped in mixed carloads at the fifth class rate, with a minimum carload weight of 40,000 pounds.

*J. K. Corbett, Littlefield, James, Ballard & Frost, F. B. James, and E. E. Williamson* for complainant.

*R. C. Fyfe and A. P. Humburg* for defendants.

*F. H. Wood* for St. Louis & San Francisco Railroad Company.

*S. H. West, E. A. Haid, and J. D. Watson* for St. Louis South-western Railway Company.

#### REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

The complainant, which is the American representative of the German Kali Syndicate, is engaged in the business of importing potash salts fertilizers from Germany, and in distributing the same to all parts of this country. The American corporation sells to the purchaser at ship side at the American port, bearing all expenses up to the port when the sales are what are known as c. i. f., meaning cost, insurance, and freight, and we understand that most of the sales are of this character. Distributing branches are located at Baltimore, Md., Savannah, Ga., New Orleans, La., Chicago, Ill., and St. Louis, Mo. Most of the product imported has been marketed in territory east of the Mississippi River, due to the fact, it is alleged, that rates west of Lake Superior and Lake Michigan and the Mississippi, embraced in what is known as western classification territory, have been too high. To-day these rates are challenged by this complaint.

The complaint is:

First. That the third-class rating on sulphate of potash and fourth class on muriate of potash and kainit in less than carloads and fifth class on sulphate of potash and muriate of potash in carloads are unreasonable, in violation of section 1 of the act.

Second. That the fifth-class rating on sulphate of potash and muriate of potash in carloads as compared with class E on kainit and other fertilizers in carloads unjustly discriminates against sulphate and muriate, in violation of sections 2 and 3.

Third. That a mixed carload rating should be established under which sulphate of potash and muriate of potash can be combined with kainit and other potash salts and also with packing-house tankage.

In the south, and more particularly the southeast, large quantities of fertilizer are manufactured from phosphate rock, and in this territory the ratings given the complainant's products are the same as are applicable to other fertilizer and are lower than those applied in western territory. These southern ratings are compared with the western for the purpose of showing that the western classification is excessive. The southern classification classifies under the head of fertilizer all of the complainant's salts, including muriate and sulphate, giving them the same rating as is given kainit. This classification makes the less-than-carload rate 20 per cent higher than the carload.

The defendants insist that their rates or their classification should not be compared with southern rates and southern classification because there is no similarity in the circumstances surrounding the transportation of fertilizers in the two territories. It is pointed out that the volume of this traffic in the west is small, almost insignificant when compared with the volume moved in the south, and that this has been recognized by the Commission as a reason for maintaining higher rates than prevail in territory where the movement is greater. In addition it is said that the Commission recognizes the right of the western carriers to maintain a higher classification and higher rates than prevail in the east, and a recent decision of the Commission, the *Sunflower Glass Co. v. M. P. Ry. Co.*, 22 I. C. C., 391, is cited.

The chairman of the Western Classification Committee, when asked as to the relative comparison of the rates between the southern and the western, testified in substance that in the south the tendency is to make an any-quantity rate and cited as an example grain and grain products, sugar, and other staple articles that move in large volume, all of which are on an any-quantity basis, each 100 pounds being charged the same rate whether in one bag or in one thousand bags. This condition does not exist in the west. In the south the manu-

factured products and the crude products are rated alike, and, as an instance of this, attention was called to fertilizers which take a sixth-class rating, while agricultural implements are also sixth class; machinery is sixth and general heavy chemicals throughout the territory take the same class. The chairman of the classification committee, being asked what prompted him to adopt the classification of the complainant's product of which complaint is made, testified as follows:

It is a well-known fact that the classification must be made by analogy and comparison. When we get into the chemicals, we must compare them with chemicals by analogy—equal weights and value—and that move in corresponding volume. Sulphate and muriate of potash are not what might be termed crude articles or ores from the ground. They are rated in the western classification in line with all other heavy chemicals that move in large volume and are used in manufacture; likewise, they are right in line with chemicals that go into the manufacture of fertilizer that move in extremely large volume and upon which no question has been raised with respect to the rates. In some cases they are rated lower than articles that are used in the manufacture—in the case of some of the ammonias. Taking a comparison of one heavy common crude chemical versus another, this stuff is properly rated in western territory. We rate it fifth class. In the southern classification it is rated at sixth class.

He further stated that sixth class in the southern classification is, relatively speaking, the same as the fifth class in the western, since the number of classes do not run below fourth class consecutively; between fourth and fifth is class A. The result of this is that fifth class western classification is the same as sixth class in southern classification. Under the western classification class A takes agricultural implements, while the next class below takes iron, steel, sugar, and heavy commodities that move in great volume. Muriate and sulphate in carloads take fifth class. In the south, in the absence of fertilizer rates, they take sixth class.

The contention of the defendants that they, by virtue of the past holdings of the Commission, are entitled to maintain higher rates in the west than in the east is borne out by our holding in *Commercial Club of Salt Lake City v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218, wherein we said "rates of transportation may properly be somewhat higher west of the Missouri River than east." After our decision in the *Sunflower case*, *supra*, in *Railroad Commissioners of Kansas v. A., T. & S. F. Ry. Co.*, 22 I. C. C., 407, in considering the rates on package salt from Hutchinson, Kans., to St. Louis, Mo., as compared with those from Detroit to St. Louis, we expressed the opinion that the difference in the rates was no greater than it ought to be. The rate on package salt from Hutchinson was 13½ cents, while from Detroit it was 11½ cents, and in this case we said:

While the rate from Detroit is less, although the distance is the same, it must be remembered that the general level of rates in the territory east of St.

Louis is much lower than that in territory to the west. Indeed this difference greatly exceeds the difference between these rates. For example, the first-class rate from Hutchinson to St. Louis is \$1.19½, while that from Detroit is 46 cents. In official classification salt is classified as sixth class and the sixth-class rate from Detroit to St. Louis is 14 cents. That commodity is not rated in western classification, but the lowest rate named from Hutchinson to St. Louis upon any class is 22 cents.

The complainant contends that if the carriers are willing to classify alike petroleum and its products, embracing commodities worth from 5 cents a gallon as crude oil to lubricating oil worth 40 cents a gallon, to make a difference in classification between kainit and sulphate and muriate of potash is wrong.

But the analogy does not hold since with petroleum the total volume is not reduced, and besides the Commission has recognized the propriety of a higher rate upon the higher valued article.

With respect to the discrimination alleged to exist against sulphate and muriate in favor of kainit and packing-house products taking the class-E rate, the defendants insist with great earnestness that if sustained by the Commission it would give the same rating to products of very different value.

These potash fertilizers all come from the same mine, the only difference as between kainit and sulphate of potash, which is the fertilizer containing the most potash, being found in the treatment given the rock as mined in order to produce the sulphate. Kainit is sold as mined and contains only about 12 per cent actual potash, while in order to secure the sulphate the kainit is put through a chemical process and the foreign substances taken out, with the result that when it is sold commercially as a fertilizer or for some other purpose it contains about 50 per cent of actual potash. Muriate of potash is secured by putting through a similar process what is known as carnallite, which is a rock mined alongside the kainit, and which as mined does not contain as high a per cent of actual potash as does the kainit. A carload of kainit sells in New Orleans for \$9.75 per ton and the sulphate for \$47.25; muriate sells for a few dollars less than the sulphate. To-day kainit in car lots goes under western classification at the lowest class rate, taking the same rate as is given sand, gravel, shells, and similar commodities, and is also given a commodity rate in western territory to points where it is used in considerable quantities, which is lower than class E.

The other fertilizers taking the same rate as does kainit are the ammoniates found in dried blood and packing-house products, tankage, etc. There are three plant foods—the potash, phosphoric acid, and nitrogen. The phosphoric acid is largely supplied by the phosphate rock mined in the south, and from the packing-house products comes the nitrogen. Practically the only potash available, except

what little comes from ashes, is to-day imported from Germany. None of these three plant foods are competitors one with the other. Each one supplies a distinct ingredient, and different lands demand one and not the others, or one in combination with the other, and sometimes both. Most packing houses in this country have established fertilizer plants, and in these plants manufacture commercial fertilizer, using their own products and mixing with them either the phosphate or the potash. Of the potash salts, kainit is apparently the most generally used. Cottonseed mills also use potash, and apparently these mills prefer the muriate. To-day there seems to be a disposition on the part of the farmer, probably resulting from an educational campaign by the Department of Agriculture, to prefer to mix his own fertilizer, and the complainant insists that the carriers should make a low enough rate so that a farmer can afford to buy the sulphate or muriate of potash and use it in such quantities as he sees fit, mixed with other fertilizers, or used in its natural state, and undoubtedly the fertilizer factory would use the sulphate if the rate were lower.

On the other hand, the defendants say that the west needs no potash; that what that country needs is rain, and with the exception of Colorado, where some potash has been used in the fruit orchards, there has not been, nor will there be, any demand for it. It is also claimed, and apparently it is a fact, that muriate and sulphate are used for other purposes than for the making of fertilizer. The Department of Commerce and Labor, bureau of foreign and domestic commerce, in stating the imports of merchandise into the United States during the year ended June 30, 1912, under the heading "chemicals, drugs, dyes, and medicines" enumerates among other things muriate of potash and sulphate of potash, while under the heading of "fertilizers" kainit is enumerated. Just how much muriate and sulphate imported into this country is finally used by manufacturers for other purposes than fertilizer does not appear. It is said that even if so used it is necessary to put it through another refining process. However, it does not seem practicable to enter upon this discussion. We are principally concerned with the relative values of the sulphate, muriate, and kainit, and it is not denied but what sulphate is the concentrated kainit and muriate the concentrated carnallite. The carnallite contains so little potash in its crude state that it can not be profitably shipped as mined, therefore, the reduction takes place. Kainit, containing a slightly higher percentage of actual potash, has been successfully marketed in Germany through the efforts of the government, and through the efforts of the same agency, materially aided by competitive conditions in the south, it has been marketed in this country. The total importa-



tions of potash salts to the United States in 1884, as compared with 1912, are as follows:

	1884	1912
	<i>Tons.</i>	<i>Tons.</i>
Muriate of potash.....	24, 356	241, 572
Sulphate of potash.....	173	44, 813
Kainit.....	126, 166	485, 183

A hundred pounds of muriate of potash contains four times as much actual potash as does kainit. The rate on muriate of potash from New Orleans, La., to Heavener, Okla., is 46 cents. The rate on kainit between the same points is 27 cents. The muriate of potash loads heavier and the purchaser secures more potash at a less freight rate by purchasing sulphate or muriate than by purchasing kainit.

The complainant cites the *Marshall Oil Co. case*, 26 I. C. C., 575, as authority for sustaining its contention that all the potash salts should be classified alike. In the case cited the carriers had refused to allow axle grease to be loaded with other petroleum products in mixed carload lots and take the rate applicable to the other products, which was lower. The Commission found in favor of the complainants. However, it should be noted that the classification of axle grease was already the same as the classification of the petroleum products, and in this material respect differs from the present case.

Reference is made to the *Virginia-Carolina Chemical case*, 22 I. C. C., 394, in which the Commission found that sulphate of potash was a fertilizer material, using the term in the sense that it was one of the articles generally used in combination with some other article in the manufacture of a complete fertilizer. However, the Commission was not called upon to classify fertilizer materials. The question in issue in the case cited was whether the tariffs of the carriers were so published as to make effective a lower rate on fertilizer than was charged, and the Commission found the rate charged to be the correct one. But in our view of the instant matter it is not material to consider whether or not the sulphate of potash and muriate of potash are, in fact, fertilizers, since it is admitted that they may be so used. As we have previously pointed out the rates at present in force enable a farmer or a fertilizer plant to secure potash in its more concentrated form at a less rate than if purchased in the form of kainit, and we do not feel that the classification of sulphate and muriate as fifth class in carloads in force in the western classification is unreasonable.

We also think that the present classification of kainit and muriate as fourth class in less than carloads is proper, but are of the opinion that the less-than-carload rating on sulphate ought not to exceed fourth class. The value of muriate and sulphate is substantially the same, the incidents of transportation are the same, and there appears

to be no reason why they should take a different less-than-carload rating.

In the course of the testimony it was stated, and has been referred to in briefs and argument, that dried blood and tankage come within the same classification as given kainit, and being worth nearly as much as the sulphate and muriate it tends to show that the classification of sulphate and muriate is too high, but we do not feel that the evidence which has been introduced upon this point is at all reliable. Certain figures were quoted from trade journals as showing the value per ton of this tankage. While we do not question the figures given we do feel that our information concerning the relative proportions of fertilizer units found in the tankage and such products is very meager, and for this reason we must dismiss from further consideration any comparison between muriate and sulphate of potash and these packing-house products.

The complainant, in support of its contention that the less-than-carload rates should not be more than 20 per cent higher than the carload, introduced as a witness a traffic expert, who testified at great length in a very general way that, in his opinion, which he apparently based largely on physical operation, the spread at present in force is too great. However, we have been referred to no specific fact or figures tending to support this contention, nor have we been referred to any opinion which can be of any aid in determining the just relationship which should exist. On the other hand the defendants have given us no very conclusive evidence tending to show that the spread is a reasonable one.

Many analogous articles take fourth class in less-than-carloads and fifth class in carloads, and we can not, upon the strength of this record, find that this relation is improper.

The third and last contention of the complainant is that they should be given the right to mix carloads of sulphate, muriate, and kainit and other potash salts and also tankage at the lowest rate applicable to any one article. All these potash salts are used frequently for fertilizer purposes and are handled by the same persons. We think that by every rule the mixture of these articles should be allowed. Tankage is also used for the manufacture of fertilizer and possibly occasionally as a fertilizer itself, but is obtained from entirely different sources, and should not perhaps under the principles followed under the western classification be allowed the privilege of mixture with the potash salts. We are of the opinion that the tariff should provide that muriate, sulphate, kainit, double manure salts, manure salts, sylvinit, and hartsalz may be shipped in mixed carloads at the fifth-class rate, minimum 40,000 pounds. An order will be issued in accordance with this report.

No. 4895.

BOSTON CHAMBER OF COMMERCE ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted April 25, 1913. Decided June 9, 1913.*

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1. Complainants ask that rates from the Atlantic seaboard to Colorado and Utah common points be so adjusted that the through rate will be less than the combination upon Chicago or the Mississippi River; *Held*. That ordinarily the through rate is and should be less than the sums of the intermediates, for the reason that the cost of the through movement is less, and the present instance is no exception to this rule.
2. It is a fundamental maxim of rate making that the rate per ton-mile shall decrease as the distance increases, but it is not a rule of such universal or imperative application that every shipper is as a matter of right entitled to the benefit of it, nor can it be said that to disregard this rule creates of necessity a discrimination.
3. Upon the facts disclosed by the record complainants do not make out an undue discrimination, but they show rather an unnatural and an unreasonable rate condition. Balancing the effect upon the carriers by reduction in revenues which must ensue upon a removal of this complaint against the slight benefit which would accrue to complainants, the Commission is of the opinion that no action should be taken now.

*D. O. Ives* for complainants.

*C. H. Blatchford* for Boston & Maine Railroad and New York, New Haven & Hartford Railroad Company.

*E. S. Ballard* for New York Central lines.

*H. C. Barlow* for Chicago Association of Commerce.

*W. F. Dickinson* for Rock Island lines.

*E. N. Clark, J. G. McMurtry, and F. M. Dewees* for Denver & Rio Grande Railroad Company.

*Henry Wolf Bickel* for Pennsylvania Railroad Company.

*J. C. Lincoln* for Merchants' Association of New York and other eastern commercial organizations.

*H. A. Scandrett, R. B. Scott, W. F. Dickinson, T. J. Norton, and H. G. Herbel* for Atchison, Topeka & Santa Fe Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Rock Island & Pacific Railway Company; Missouri Pacific Railway Company; and Union Pacific Railroad Company.

## REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainants ask that rates from the Atlantic seaboard to Colorado common points and Utah points be so adjusted that the through rate will be less than the combination upon Chicago or the Mississippi River. Under the present adjustment a commodity which moves under an any-quantity rate can be taken up at New York City, transported to Chicago, merchandised at Chicago, and sent on to a point in Colorado or Utah at the same rate that it can be shipped directly from New York to those destinations. The complainants say that this is wrong, and that they as merchants selling in these territories are injured.

This proposition is supported by two reasons:

First. It is said that the cost of the through shipment is less than that of the shipment to and from the intermediate point, since in the through shipment but two terminal services are required, while the two shipments involve four terminal services.

The defendants reply that whatever may be true in general, in this particular case the cost of the through movement is even greater than that of the two shorter movements, and they have undertaken to show by a considerable amount of testimony that such is the fact. The method of handling this business by the different lines at St. Louis and Chicago was gone into in great detail for the purpose of proving that in actual practice it was more expensive to transfer this business from the eastern line to the western line at these points than it would be to make delivery to a consignee and to again take up the business from a consignor.

No attempt will be made here to analyze this testimony. While the defendants have shown many unusual items of expense in connection with this business at these transfer points, we do not think that on the whole they have fairly sustained the issue which they make. It is hardly possible that even in case of less-than-carload business the expenses of handling this traffic at Chicago, for example, are as great, all things considered, as though the business were taken into the city, delivered to a consignee, and again taken up in the city from an independent consignor, with all the expense incident to the transaction of that business and to the furnishing of the necessary facilities. A great deal of this traffic via Chicago does not enter the city of Chicago at all, being handled at outer junction points. To a considerable extent cars are loaded through from the Atlantic seaboard to the Missouri River and the seals are not even broken at Chicago.

Especially in case of carload traffic is it incredible that the cost of simply delivering a loaded car from one carrier to its connection

can be as great as the cost of placing that car upon some delivery track, allowing two days' free time for its unloading, taking out that car and again setting in another car for loading, with another two days of free time.

If the case were to turn upon the item of expense alone we should be compelled to find upon this record that the cost of handling through business was less than that incident upon the two intermediate hauls. But even if it did appear that in case of this particular traffic the expense at one or more of these connecting points was as great or greater than with the two shipments, still that ought not to control. As a general principle, certainly, the cost of the through movement is less, and the mere fact that the lines of these carriers happen to so connect that in some particular instance the cost is greater in case of the through movement would be no reason for charging a higher through rate. While cost of service is a most material factor to be considered in the determination of freight rates, it is not the only factor. The rate can not vary between every station according to the grades or other physical incidents of the transportation. If the rule for which the defendants contend were to be applied then must the rate from every classification point where full carloads are made up and sent out be less than from intermediate points where only part carloads are taken up.

We think that the complainants have established this branch of the case. Ordinarily the through rate is and should be less than the sums of the intermediates, for the reason that the cost of the through movement is less, and the present instance is no exception to this rule.

The second reason urged by the complainants is that a fundamental maxim of rate making requires that the rate per ton-mile shall decrease as the distance increases. This undoubtedly is a rate-making maxim which ordinarily is and ought to be applied where conditions admit. It is not, however, a rule of such universal or imperative application that every shipper is as a matter of right entitled to the benefit of it, nor can it be said that to disregard this rule creates of necessity a discrimination. The Commission has several times said that while the through rate should be less than the sum of the intermediates nevertheless the mere existence of that rate adjustment did not of itself make out a case which called for correction. It is necessary to go further and to show either that the rates are unreasonable or that some harmful discrimination results.

We are not much impressed with the substantial character of the injury which these complainants show. The witnesses produced before us were for the most part wholesalers located upon the Atlantic seaboard and doing business in Colorado and Utah. They all testified that a lower freight rate, as compared with that of their com-

petitors from Chicago and the middle west, would be of advantage, and this goes without saying. Most of them were dealers in specialties or in high-grade articles in which the freight rate is not so significant as with coarser commodities where competition is keener and margins are closer, and where the expense of transportation forms a greater part of the cost at destination. While these merchants would benefit by a reduction in rate, nevertheless the existence of their business is not dependent upon it.

In the *Burnham-Hanna-Munger case*, 14 I. C. C., 299, the Commission established a rate from the Atlantic seaboard to the Missouri River less than the combination upon the Mississippi River. In the *Nevada Case*, 21 I. C. C., 329, rates were prescribed from the Atlantic seaboard to Reno and other Nevada points which were less than the Mississippi River combination. It appears, therefore, that there are now in existence tariffs upon both sides of these points in question which recognize the principle contended for by the complainants. There is certainly no very good reason why, if this principle should be applied to the Missouri River and again to Nevada points, it ought not also to be recognized in making rates to Colorado and Utah.

On the whole the complainants, we think, show a condition which ought to be corrected if it can be. They do not make out an undue discrimination, but they show rather an unnatural and an unreasonable rate condition. *Appalachia Lumber Co. v. L. & N. R. R. Co.*, 25 I. C. C., 193. It does not appear that the complainants are suffering acutely from the present condition, which has long existed.

How can this wrong be corrected? The complainants are careful to reiterate that no attack is made upon the reasonableness of these rates, either through or intermediate, and that the complainants have no desire to reduce the revenues of the defendants. Nevertheless it is perfectly evident that no relief can be given the complainants without reducing these rates and thereby the revenues of the carriers affected. The through rate can only be made less by requiring carriers up to Chicago, or from Chicago, to accept less than they now receive. The only alternative is to permit an advance of all class rates, which certainly ought not to be done for the purpose of correcting this situation.

The Commission has often remarked that class rates from the Atlantic seaboard to Chicago and St. Louis are reasonably low. These rates have come down to us from a time when competition between railways was more real than it is to-day, and they themselves were the product of acute competitive conditions. In the *Burnham-Hanna-Munger case* we declined to reduce these rates up to the Mississippi River because they were already low enough even as  
28 I. C. C.

applied to through traffic for points beyond. If they could not be reduced then they certainly should not be now. The Commission itself established the rates now in force from Chicago and the Mississippi River to both Colorado points and Utah points. While it might not follow that a carrier may not properly be required to accept something less for its through service than a reasonable local rate, we do not feel that in the present case at the present time these carriers west of Chicago should be required to accept less than the rates fixed by us.

The cost of operation is increasing, and carriers insist that it is no longer possible to offset this by additional economies or by increasing gross receipts. Balancing the effect upon the carriers which must ensue upon a removal of this complaint against the slight benefit which would accrue to the complainants, we are of the opinion that no action should be taken now.

The complainants, as shippers, probably experience more real hardship from being compelled to operate under two classifications than from the somewhat higher rate itself. The classification, as well as the rate, breaks upon the Mississippi River. A given article often takes a different class in western than in official classification territory, minima and mixtures are different, all of which leads to confusion and vexation and undoubtedly tends to prevent the free intercourse of business between these sections. This difficulty, however, always arises where shipments are made under two classifications. While it has sometimes been removed by projecting one classification into the territory of another, as we are here asked to do by the complainants, this is not usually so, and we do not feel justified in establishing that rule in this case. Carriers are at work upon a uniform classification, and Congress has that matter under advisement. There is little doubt that this source of embarrassment will be removed in the near future in a manner more just to all parties than any order which we could make in this case.

This complaint must be dismissed.

28 I. C. C.

FOURTH SECTION APPLICATIONS NOS. 774 AND 5301.

IN THE MATTER OF COAL RATES FROM THE ANTHRACITE REGION TO POINTS ON THE NEW HAVEN RAILROAD.

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*Submitted September 26, 1912. Decided June 16, 1913.*

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Respondent allowed to make a less charge than is made to intermediate points on prepared sizes of anthracite coal, all-rail, from mines in the anthracite region to Boston, Needham, Needham Heights, and Newton Upper Falls, Mass.

*Amos L. Hatheway* for hard coal dealers of Greater Boston, Mass.  
*Edward G. Buckland* for New York, New Haven & Hartford Railroad Company.

*H. M. Biscoe* for Boston & Albany Railroad Company.

REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

Fourth Section Application No. 5301 requests permission to establish a rate of \$2.85 per gross ton on prepared sizes of anthracite coal, all-rail, from mines in the anthracite region to Newton Upper Falls, Needham, and Needham Heights, Mass., while maintaining a higher rate at intermediate points.

In the application it is stated that the New York Central & Hudson River Railroad, in connection with its Boston & Albany division, is about to establish a rate of \$2.85 to Allston and Newton Lower Falls. Dealers located at the latter points are in competition with those located at Newton Upper Falls, Needham, and Needham Heights, and it is stated that unless the New Haven road can name as good a rate to the points on its line these dealers will be forced to go out of business. Some time after the filing of this application the Commission was notified that the New York Central did not propose to put in the rate of \$2.85, and that, therefore, the New Haven road desired to withdraw its application with respect to Newton Upper Falls, but desired to have the application stand with respect to Needham and Needham Heights.

It was also stated that coal reached Boston at a lower rate than the rail carriers published, and was carried from tidewater by automobile trucks to Needham and Needham Heights at a rate less than \$3, and to meet this competition it was proposed to put in effect the rate of \$2.85. The Commission denied this application under Fourth



Section Order No. 230, stating that sufficient justification had not been shown for the relief sought.

Since then the Commission has conducted a hearing with reference to this application, at which the New Haven road and the hard coal dealers of Boston were represented. Substantially the same reasons were advanced at the hearing as were set forth in the application, but with more detail.

The rail-and-water rate from the anthracite regions to Boston is \$2.55; the all-rail rate \$2.65. Coal dealers of Boston who receive coal by water at the \$2.55 rate make deliveries by automobile trucks in the suburbs of the city, including Needham, Needham Heights, and Newton Upper Falls, and the carriers allege that the present rate of \$3 per ton is not sufficiently low to meet this competition, and the testimony so indicates.

In this connection there has been filed with the Commission Fourth Section Application No. 774, setting forth the effect of water competition at Boston and points near by as justifying a lower rate than exists at the interior points. It seems to be generally conceded that this application should be granted. This being so, it would seem at first thought that the fair way of making rates to the more distant points as the lines radiate out from Boston would be to add a certain amount for each mile. As an illustration, Forest Hills is 14 miles from Boston. The rate is \$2.65. Going west the next station is Roxbury, which has a rate of \$2.85, the distance being 2 miles, and the same rate applies at other points more distant. Instead of putting in the blanket rate of \$2.85 at a number of stations, grade the rate until it runs into the \$3 rate. However, the objection to this is that the transportation facilities obtaining at the various points are not alike, and that while one point may be nearer tidewater than another, either the railroad finds no competition there or the coal dealer in Boston has not seen fit to include it within his so-called circular rate territory in which the Boston price prevails. Apparently, we must confine ourselves in the present instance to the towns actually complaining, namely, Needham and Needham Heights, and the Newtons. In our opinion rates to these points should not exceed the rate to Boston by more than 20 cents per ton.

A fourth section order will therefore be issued granting to the respondent the right to make a less charge upon this commodity to Boston, Needham, Needham Heights, and Newton Upper Falls than is made to intermediate points, provided that the rate to no intermediate point shall exceed the present rate of \$3 per gross ton on prepared sizes, and that rates to Needham, Needham Heights, and Newton Upper Falls shall not exceed the rate to Boston by more than 20 cents per ton.

No. 4818.

**NORTHWESTERN WOODENWARE COMPANY**

*v.*

**CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY COMPANY ET AL.**

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*Submitted September 20, 1912. Decided June 9, 1913.*

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Rates charged by defendants for the transportation of wooden lard tubs in carloads from Tacoma, Wash., to Chicago, Ill., and other eastern points found to be unreasonable, and reasonable rates prescribed for the future.

*Walter E. McCornack* for complainant.

*O. W. Dynes* for Chicago, Milwaukee & Puget Sound Railway Company and Chicago, Milwaukee & St. Paul Railway Company.

*H. A. Scandrett, R. B. Scott, and Charles Donnelly* for Union Pacific Railroad Company; Oregon-Washington Railroad & Navigation Company; Oregon Short Line Railroad Company; Chicago, Burlington & Quincy Railroad Company; Great Northern Railway Company; and Northern Pacific Railway Company.

*Fred G. Wright* for St. Louis, Iron Mountain & Southern Railway Company; Missouri Pacific Railway Company; and Texas & Pacific Railway Company.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

Complainant, a corporation engaged in the manufacture of various articles of woodenware at Tacoma, Wash., by petition, filed April 20, 1912, assails as unreasonable and unjustly discriminatory the carload rates charged by defendants for the transportation of wooden lard tubs from Tacoma, Wash., to Chicago, Ill., and to other eastern points. It asks that lower and nondiscriminatory rates be established for the future, and seeks reparation on past shipments.

Two schedules of rates are involved. In so far as based on minimum weights of 31,500 pounds for cars 41 feet or less in length, and 34,000 pounds for cars over 41 feet in length, they were at the time the petition was filed, as shown in the table following.

*Rates from Tacoma, Wash., in cents, per 100 pounds.*

To—		Cents
Chicago, Ill.....	}	75
East St. Louis, Ill.....		
Wichita, Kans.....		
Kansas City, Kans.....		
St. Joseph, Mo.....		
Sioux City, Ia.....	}	65
Omaha, Nebr.....		
St. Paul, Minn.....		
Fort Worth, Tex.....		
Oklahoma City, Okla.....		
		80

These rates also applied to numerous other points and were subject to a rule which provided that where a carrier was unable to furnish a car of the capacity ordered by a shipper, and for its own convenience furnished a car of less capacity, the smaller car might be used on the basis of actual weight when loaded to its full visible capacity, or two smaller cars would be furnished to be used on basis of the minimum weight of the car ordered, provided the shipper did not order cars of dimensions not covered by the tariffs.

Effective January 26, 1911, the carriers established lower rates to some of the points, but raised the minimum in connection with the reduced rates to 41,500 pounds, regardless of the length of the car, as shown in the following table:

*Rates from Tacoma, Wash., in cents per 100 pounds.*

To—		Cents
Chicago, Ill.....	}	65
St. Joseph, Mo.....		
Omaha, Nebr.....		
Sioux City, Iowa....		
St. Paul, Minn.....		
		60
		55

The lower rates and higher minimum were subject to the rule referred to until April 22, 1911, when its further application as to them was prohibited. The higher rates and lower minimum weights were continued in the tariffs. November 2, 1911, the carriers established a rate of 81 cents to Fort Worth, and a rate of 74 cents to Oklahoma City and intermediate points, based on the higher minimum. The two sets of rates were still in effect when this proceeding was instituted.

Complainant contends that the higher rates are unreasonable inherently and relatively, and that the higher minimum of 41,500 pounds applicable to shipments under the reduced rates is unreasonable, because except in rare instances the traffic can not be loaded to that weight; and it asks that the carriers be required either to apply a minimum of 34,000 pounds to the lower rates or to restore

to the tariffs naming the lower rates and higher minimum the two-for-one rule.

The principal markets for the traffic are at Chicago and points on the Missouri River. About 95 per cent of complainant's output is sold east of Denver, Colo., in territory generally designated as the middle west. The tubs are made of spruce and cottonwood obtained from the vicinity of Puget Sound, but the demand for them on the Pacific coast is very limited. They are used as containers of lard and other similar products of packing industries, vary in size from 20 to 85 pounds capacity, and are generally regarded as a low-grade commodity. The sizes shipped in greatest quantities are those of 60 and 80 pounds capacity. The evidence shows that in cars 50 feet in length it is possible to load the smaller tubs, varying in size from 20 to 28 pounds capacity, to the higher minimum of 41,500 pounds, but that such minimum can rarely be reached with tubs above 28 pounds capacity in the ordinary 50-foot car. A carload exclusively of the smaller sizes is ordered but rarely, and the result is that not more than 10 per cent of complainant's shipments can be loaded to the minimum prescribed for the reduced rates.

Complainant's chief competitors are located in the state of Wisconsin. In the early part of 1910, induced thereto by the fact that for several years the competition had shown increasing acuteness and force, complainant opened negotiations with the carriers with a view to obtaining a reduction in the rates to its principal markets. The lower rates of January 26 and November 2, 1911, with the higher minimum, were the outcome of these negotiations. The result not being satisfactory this proceeding was instituted. The carriers claimed that the higher minimum was involved in the negotiations for lower rates, and that such was the leading consideration that induced the rate reductions. The officer who conducted the negotiations for complainant testified, however, that nothing was said at the time about any change in the minimum weights, and that such change was not suggested until after complainant had entered into long time contracts for the delivery at Chicago and other markets of large quantities of its output on the basis of the promised lower rates. Whatever may be the merits of this dispute, the question before us is whether the existing rate adjustment is reasonable.

Under the existing rate adjustment a shipper may use the higher rates and lower minimum weights, with the privilege of the two-for-one rule, or he may use the reduced rates and higher minimum applicable to cars of all sizes, without the benefit of the two-for-one rule. It must be conceded that except as to orders for carload quantities of the smaller sizes (20 to 28 pounds capacity) which are of rare occurrence, the change in the rates resulted in little or no

benefit to the shipper. This fact can not be regarded, however, as of controlling weight, in determining the question of the reasonableness of the rates as now in force.

Complainant relies chiefly upon comparisons of car earnings on the commodity involved with car earnings on analogous commodities moving from Tacoma to the same points of destination. This is perhaps as fair a test of the reasonableness of the rates in question as is obtainable under the circumstances. The evidentiary force of such comparisons has not infrequently been recognized. *Florida Fruit & Vegetable Shippers' Asso. v. A. C. L. R. R. Co.*, 14 I. C. C., 476, 489-490; *In re Advances on Coal*, 22 I. C. C., 604, 620. The car earnings on wooden lard tubs under the higher rates and 34,000 pounds minimum from Tacoma to some of the destination points involved are shown as follows:

From Tacoma, Wash., to—	Rate per 100 pounds.	Car earnings.
	<i>Cents.</i>	
Chicago, Ill.....	75	\$254.00
East St. Louis, Ill.....	75	255.00
Kansas City, Kans.....	65	221.00
Omaha, Nebr.....	65	221.00
Fort Worth, Tex.....	87½	287.50

The average loading of the commodity in cars of 50 feet in length is approximately 37,000 pounds. On the basis of 175 actual shipments loaded into cars varying in length from 49 feet 6 inches to 50 feet 3 inches, shown by a schedule filed with the record, the exact average was 37,345 pounds. Car earnings under the higher rates with an average loading of 37,000 pounds would be as follows:

From Tacoma, Wash., to—	Rate per 100 pounds.	Car earnings.
	<i>Cents.</i>	
Chicago, Ill.....	75	\$277.50
East St. Louis, Ill.....	75	277.50
Kansas City, Kans.....	65	240.50
Omaha, Nebr.....	65	240.50
Fort Worth, Tex.....	87½	323.75

Under the lower rates and the higher minimum of 41,500 pounds the car earnings are shown in the next following table:

From Tacoma, Wash., to—	Rate per 100 pounds.	Car earnings.
	<i>Cents.</i>	
Chicago, Ill.....	65	\$206.75
East St. Louis, Ill.....	65	206.75
Omaha, Nebr.....	60	180.00
Fort Worth, Tex.....	81	239.15

Car earnings under the lower rates based on the minimum of 34,000 pounds and the approximate average loading of 37,000 pounds, are both shown in the next following table:

From Tacoma Wash., to—	Minimum and average weight.	Rate per 100 pounds.	Car earnings.
	<i>Pounds.</i>	<i>Cents.</i>	
Chicago or East St. Louis.....	34,000	65	\$221.00
	37,000	65	240.80
Omaha, Nebr.....	34,000	60	204.00
	37,000	60	222.00
Fort Worth, Tex.....	34,000	81	275.40
	37,000	81	299.70

It is to be observed that the lower rates applied to the minimum of 41,500 pounds produce greater car earnings than the higher rates applied to the 34,000 pounds minimum.

The same transcontinental tariff that contained the rates complained of on wooden lard tubs also named rates from Tacoma to the same destination points on such commodities as sash, doors, and blinds, wooden mantels, general woodenware, and wooden pipe, that produced much lower car earnings. The commodities, minimum weights, rates, and car earnings are shown in the next following table:

From Tacoma, Wash., to—	(1) Sash, doors, and blinds; minimum weight, 30,000 pounds. <sup>1</sup>		Wooden mantels; minimum weight, 20,000 pounds.		Woodenware; minimum weight, 16,000 pounds.		Wooden pipe; minimum weight, 30,000 pounds.	
	Per 100 pounds.	Car earnings.	Per 100 pounds.	Car earnings.	Per 100 pounds.	Car earnings.	Per 100 pounds.	Car earnings.
Chicago, Ill.....	\$0.60	\$180	\$0.85	\$170	\$1.25	\$200	\$0.75	\$225
East St. Louis, Ill.....	.60	180	.85	170	1.25	200	.75	225
Omaha, Nebr.....	.55	165	.75	150	1.25	200	.65	195
Fort Worth, Tex.....	.78	234	.87½	175	1.25	200	.80	240

<sup>1</sup> Rates apply on sash, doors, and blinds manufactured from cedar, cottonwood, fir, hemlock, larch, pine, redwood, or spruce lumber.

Except in a few instances, the car earnings shown in the last table are not approximately as large as earnings that would accrue on wooden lard tubs at the lower rates of January and November, 1911, based on a minimum of 34,000 pounds. These tables show that sash, doors, and blinds, which are products of cottonwood and spruce as well as of other kinds of lumber, earn only \$180 per car to Chicago, whereas wooden lard tubs, also the product of cottonwood and spruce, earn \$255 per car to Chicago under the higher rate and lower minimum, and \$269.75 per car under the lower rate and higher minimum. To Omaha, Nebr., the car earnings on sash, doors, and blinds are \$165 per car, whereas on wooden lard tubs the earnings are \$221 per car under the higher rate and lower minimum, and \$249

per car under the lower rate and higher minimum. At the time this proceeding was begun the defendant carriers maintained a rate of 85 cents per 100 pounds, based on a minimum of 20,000 pounds, on tin cans, including lard pails, from Tacoma, Wash., to all the destination points here involved, producing earnings of \$170 per car. The same rate and minimum applied in the opposite direction, as is also true of other rates named in the last above table. As to all the rates and commodities referred to for comparison, the two-for-one rule applied under the tariffs.

Counsel for defendants, while conceding that a fair test of the reasonableness of the rates in question may be obtained by a comparison of car earnings, object to comparisons based on minimum weights and insist that to be of evidentiary force such comparisons should be based on the average actual load weight per car. It must be assumed, however, that the minimum weights established by the carriers are intended reasonably to comport with the loading capacity of the cars as to the particular commodities to which they relate, and in the absence of direct testimony to show the average loading of the commodities referred to, which evidence is within the possession and knowledge of the carriers and within their power to furnish, we think it but fair and reasonable to compare the minimum weights on wooden lard tubs with the minimum weights applied to the analogous commodities, as a means to ascertain, approximately at least, the comparative car earnings.

It is doubtless true that the average actual loading of any given commodity would furnish more definitely the average car earnings as to that particular commodity, but to require shippers to furnish evidence of such actual car loading in all cases where comparisons of car earnings are relied on would be to place upon them a task practically impossible of performance, for the reason, already mentioned, that such evidence is in the possession of the carriers themselves and would be difficult of ascertainment by shippers. The car minimum gauge does not seem to be unfair to either the carrier or the shipper, and under the circumstances of this case we think such comparisons are justified and that from them reasonably just conclusions may be reached.

Upon the facts of record we are of opinion and find that the higher rates complained of are, under present conditions, unjust and unreasonable, and that the minimum weight of 41,500 pounds, in connection with which the lower rates are applied, is also unreasonable. We further find that a reasonable minimum weight for the traffic is 31,500 pounds for cars 41 feet in length, and correspondingly lower or higher for cars under or over 41 feet in length, and that reasonable

rates to be applied from and to the points in question are as shown in the following table:

Rates from Tacoma, Wash., in cents per 100 pounds.		
To—		Cents.
Chicago, Ill.....	}	70
East St. Louis, Ill.....		
Kansas City, Kans.....		
St. Joseph, Mo.....		
Omaha, Nebr.....	}	65
Sioux City, Ia.....		
St. Paul, Minn.....		60
Fort Worth, Tex.....		81
Oklahoma City, Okla..	}	74
Wichita, Kans.....		

Rates and minimum weights not to exceed those herein found reasonable, and subject to the two-for-one rule above referred to, will be prescribed for the future. Under all the circumstances we are of opinion and find that no reparation on past shipments should be awarded, and the prayer of the petition in that respect is denied. *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C. 43; *National Wool Growers' Asso. v. O. S. L. R. R. Co.*, 25 I. C. C. 675; *Charles Boldt Co. v. C., R. I. & P. Ry. Co.*, 27 I. C. C. 11. An order will be entered in accordance with the conclusions herein announced.



No. 5335.  
ATLANTIC PACKING COMPANY OF BALTIMORE CITY  
ET AL.

v.

AMERICAN EXPRESS COMPANY ET AL.

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*Submitted April 2, 1913. Decided June 16, 1913.*

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Arrangement by which respondents provide receiving depots in convenient locations for shipments of oysters at Baltimore, instead of pick-up wagon service, not found to be discriminatory. Respondents should reform their tariffs so as to state plainly extent of pick-up and delivery service at Baltimore and should provide a receiving station for oysters in the section of the city in which complainants are located.

*E. L. Stinchcomb* for Atlantic Packing Company of Baltimore City, Miles & Company, incorporated, and F. F. East & Company.

*Frank H. Platt* and *Branch P. Kerfoot* for United States Express Company.

*T. B. Harrison, jr.*, for American and Adams Express companies.

REPORT OF THE COMMISSION.

*MARBLE, Commissioner:*

Petitioners herein are shippers of oysters from Baltimore, Md., by freight and express. They ask the Commission to require the respondent express companies to perform pick-up service for express shipments of oysters at Baltimore. They also ask reparation.

Petitioners and respondents are in substantial agreement as to the main facts. It is admitted that respondents pick up and deliver express shipments of all kinds of property excepting oysters at the places of business of the petitioners. The collection and delivery limits of the respondents in Baltimore have never been properly defined by tariff publication. Official express classification No. 21, in effect now and throughout the time covered by the petition, provides:

Rule 5.—The established rates and charges of the companies, parties to this classification, include free collection and delivery only at points where wagon service is maintained and within the established collection and delivery limits at such points.

At several points in Baltimore respondents maintain depots where shipments of oysters are received. It has been the custom for many

years to receive such shipments only at these depots. The wagons of the respondents at frequent intervals gather the shipments of oysters from the depots and distribute them to the various railroad loading platforms.

There are in Baltimore about 75 shippers of oysters. Twenty-two of these have signified their preference for an express service which shall include wagon collection of oyster shipments. The remaining shippers have joined in stating their preference for a continuation of the system of receiving depots as now operated by the carriers.

Those who prefer the present system profess to fear that if wagons of the express companies were to render a pick-up service they would follow regular routes, passing from the establishment of one shipper to the establishment of another, thus enabling business rivals to spy upon each other's shipments. They also state that the storage facilities of shippers are limited, and that the present system is more valuable to shippers than a wagon service would be if operated at intervals greater than an hour. They also state that they are compelled to maintain wagons for other purposes, and that the transfer of outgoing shipments to the receiving depots is practically without extra expense.

The express rates from Baltimore on oysters are commodity rates lower than ordinary merchandise rates. They have never been held out by carriers, nor understood by shippers, to include pick-up service at that point, although they are governed by the somewhat ambiguous provision of the classification above quoted. The fact is that these tariffs were framed, and have been read by the carriers and shippers for years, in the light of an established trade custom at Baltimore.

The respondents established their oyster depots at various points throughout the city of Baltimore most convenient to the largest number of shippers. Complainants herein located at Baltimore since these depots were established and chose locations some distance therefrom. The respondents have signified their willingness to open new receiving depots for oysters in the section of the city where petitioners are located. They resist the demand for the operation of a pick-up service for oysters upon the ground that the cost of such a service as would adequately supply the needs of all shippers would be prohibitive upon the present rates, and on the further ground that the present service is more satisfactory to shippers than wagon service would be.

The respondents perform a pick-up service on oyster shipments at Norfolk, Va., and other points under the same general rate basis, but it appears that the physical conditions surrounding the industry at these other points differ from those at Baltimore.

It is evident from the record that the system of receiving depots for oysters provided at Baltimore is better fitted to the needs of the shippers of that city and is more acceptable to them than would be such a wagon service as is given at Norfolk, Va., and other oyster-shipping points with far less business than Baltimore. Therefore there is no undue discrimination in the Baltimore arrangement.

The tariffs of the respondents must be reformed and must plainly state the extent, as to territory and commodities, of the pick-up and delivery service at Baltimore. A requirement to this effect, with respect to all express stations, was contained in our order of June 8, 1912, *In the Matter of Express Rates*, 24 I. C. C., 380. We understand that such a publication is now in the course of preparation and will shortly be issued.

The system of receiving stations at Baltimore should be completed by the addition of such a station in the section of the city in which complainants are located. Having expressed their willingness to take such action, it is assumed that no order to that effect is necessary.

No basis for reparation appears.

If the suggestions herein contained are not complied with within 30 days from the service upon respondents of this report, complainants may call the matter to the attention of the Commission for such action as may be proper.

28 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 180.

RATES ON TIN CANS AND OTHER COMMODITIES BETWEEN CALIFORNIA AND POINTS IN OTHER STATES.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF TIN CANS AND OTHER COMMODITIES BETWEEN POINTS IN THE STATE OF CALIFORNIA AND POINTS IN OTHER STATES.

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*Decided August 12, 1913.*

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1. Respondents having failed to make proper adjustment of rates on grape, berry, and fruit baskets, and on empty carriers, returned, between California and points in other states, as required by the original report herein, the order of suspension is made permanent.
2. Recent adjustment of rates on tin cans between said points justify vacation of the order of suspension as to them.

*F. A. Jones* for Arizona Corporation Commission.

*Fred P. Gregson* for Associated Jobbers of Los Angeles.

*R. Johnston* for Pacific Creamery Company.

*E. W. Camp* and *U. T. Clotfeldter* for Atchison, Topeka & Santa Fe Railway Company.

*F. W. Gompf* for Pacific Freight Tariff Bureau.

*C. W. Durbrow*, *G. D. Squires*, *E. S. Ives*, *H. A. Scandrett*, and *James G. Wilson* for Southern Pacific Company and Arizona Eastern Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

In the original report in this proceeding, 27 I. C. C., 298, it was held that the respondents had not justified the increased rates proposed by items Nos. 12, 27, and 29 of Pacific freight tariff bureau exception sheet No. 1-C, *F. W. Gompf*, agent, I. C. C. No. 119, and the carriers were given until August 1, 1913, to establish a reasonable scale.

Effective July 15, 1913, the respondents reduced the class rates from California points to points in Arizona. The following rates in 28 I. C. C.

effect from San Francisco to Phoenix prior to July 15, 1913, and the rates effective on that date indicate the reductions made:

From San Francisco to Phoenix, Ariz.	Class rates in cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
Prior to July 15, 1913.....	223	188	167	151	124	133	107	97½	82½	78
Effective July 15, 1913.....	190	157	137	114	93	93	76	65	60	58

Item No. 12, under suspension, proposes to change the carload rating on grape, berry, and fruit baskets, nested, from class C, minimum weight 20,000 pounds, to class B, minimum weight 30,000 pounds, when shipped in mixed carloads with fruit-basket crates, knocked down, and to second class, minimum weight 10,000 pounds, when shipped in straight carloads. The rate on fruit baskets, nested, from San Francisco to Phoenix prior to July 15, 1913, was 97½ cents per 100 pounds, and the present class-C rate is 65 cents per 100 pounds. The change proposed would make the rate \$1.57 per 100 pounds on fruit baskets in straight carloads, and 76 cents per 100 pounds when mixed with fruit-basket crates, knocked down. There is no evidence in the record as to the relative movement of fruit baskets in straight carloads and in mixed carloads with fruit-basket crates. In a letter to the Commission the respondents express a willingness to continue as commodity rates to Phoenix and Glendale, Ariz., the former class-C rates of 97½ cents per 100 pounds from San Francisco rate points and 77½ cents per 100 pounds from Los Angeles rate points, subject to minimum weight of 20,000 pounds. No reason is disclosed by the record why Phoenix and Glendale should enjoy the rates in effect when the order of suspension was entered, while the rates to other Arizona points are materially increased. The increased rates which would result from application of the present class rates to the classification proposed have not been justified by the respondents, and the order of suspension as to item No. 12 will be made permanent.

Item No. 27 advances the rating on tin cans from class C with graduated minima to the current western classification rating, which is fourth class with minimum weight 14,000 pounds, subject to rule 6-B. The rates on tin cans from California points to points in Arizona to which carload shipments move in effect at the time the order of suspension was issued have been continued in effect by the publication of specific commodity rates. The vacation of the order of suspension as to item No. 27, therefore, will not result in an advance in these rates, and it will be permitted to become effective. This will

be done, however, without prejudice to any complaint now pending before the Commission or which may hereafter be made specifically attacking the reasonableness of the rates on tin cans from California points to points in Arizona.

The present rating on empty carriers, returned, is 15 per cent of the western classification rating on new carriers. Item No. 29, which is under suspension, provides class-E rating on carload shipments of empty carriers, returned, and the western classification rating on less-than-carload shipments.

From an exhibit offered on behalf of the respondents and referred to in the original report, it appears that the revenue on empty carriers, returned, under the rates in effect when item 29 was suspended was not high and it is materially less since the reductions in the class rates became effective. On carload shipments of empty wine barrels, returned, from Phoenix to Los Angeles the revenue per car is \$9, and the car-mile earnings 2.17 cents. On empty beer barrels from and to the same points, the revenue per car is \$14, and the per-car-mile earnings 3.1 cents. The proposed change, if it becomes effective, would increase the per-car earnings on empty wine barrels, returned, to \$58.80, and the per-car-mile earnings to 13 cents, and on empty beer barrels, returned, the per-car earnings would be increased to \$84, and the per-car-mile earnings to 18.6 cents. The present rates are low and some advances might fairly be made, but the respondents have not justified increases amounting to over 400 per cent, which would result if the changes proposed became effective. The evidence of record concerning this item is not sufficient to warrant a finding as to what would be a reasonable adjustment. The order of suspension as to item No. 29 will be made permanent, but the respondents may apply for a modification of such order in connection with the submission to the Commission of a scale of rates materially less than would result from the change now proposed by item No. 29.

An order will be entered accordingly.

28 I. C. C.

No. 4947.

SHERIDAN CHAMBER OF COMMERCE

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COM-  
PANY ET AL.

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No. 5078.

SAME

v.

SAME.

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No. 5079.

SAME

v.

SAME.

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*Submitted August 15, 1913. Decided October 6, 1913.*

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Upon petition of defendants a rehearing was granted in these cases. The original hearing dealt with rates on coal from Sheridan, Wyo., to destinations on the Chicago & North Western in Nebraska and South Dakota, on the Chicago, Milwaukee & St. Paul in South Dakota, and on the Northern Pacific east and west of Billings, Mont. Upon the rehearing the Big Horn Collieries Company, Owl Creek Coal Company, and Board of Railroad Commissioners of Montana were granted leave to intervene. The first two ask that the rates from mines near Kirby, Wyo., be adjusted so as to bear a proper relationship to rates established from Sheridan, Wyo., to destinations in the three cases under consideration. *Held:*

1. Sheridan coal should move to points upon the Chicago & North Western and the Pierre, Rapid City & Northwestern herein involved at the same rate enjoyed by Hudson. Proper routing for coal moving from Sheridan to these destinations is prescribed.
2. Joint rates should be established from Kirby to destinations on the Chicago & North Western and the Pierre, Rapid City & Northwestern herein involved no higher than one dollar above the rates prescribed from Sheridan.
3. The Commission's opinion having been complied with no further order is necessary in Docket No. 5079, involving rates to destinations on the Chicago, Milwaukee & St. Paul.

4. For distances within 500 miles of the point of origin joint rates should be established from Sheridan to points on the Northern Pacific east of Billings not more than 40 cents over those prevailing from Red Lodge, and to points west of Billings 55 cents over Red Lodge, and from Kirby to points on the Northern Pacific east and west of Billings joint rates should be established not more than 65 cents over the prevailing rates from Red Lodge. To points between 500 and 600 miles from Sheridan the differentials suggested as compared with rates from Red Lodge should be decreased 10 cents, and for each 100 miles additional a further reduction of 10 cents should be made in the differential.
5. It is possible for a carrier to discriminate unjustly and unlawfully against a point which it does not reach over its own rails.
6. The difference in cost of production can not be recognized as a basis for the adjustment of freight rates between different localities.

*Edward P. Smith* for complainant.

*C. C. Wright* and *F. P. Eyman* for Chicago & North Western Railway Company.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*J. N. Davis* for Chicago, Milwaukee & St. Paul Railway Company.

*Charles Donnelly* and *J. S. Woodworth* for Northern Pacific Railway Company.

*H. A. Scandrett* for Oregon-Washington Railroad & Navigation Company.

*Albert L. Vogl* for Big Iron Collieries Company and Oil Creek Coal Company.

*O. W. Tong* for Board of Railroad Commissioners of Montana.

#### SUPPLEMENTAL REPORT OF THE COMMISSION.

*MEYER, Commissioner:*

Upon petition of defendants a rehearing was granted in the above-entitled cases. These cases involved rates on coal from Sheridan, Wyo., on the line of the Chicago, Burlington & Quincy Railroad, to points in Nebraska and South Dakota, on the lines of the Chicago & North Western and the Chicago, Milwaukee & St. Paul, and to points east and west of Billings, Mont., on the line of the Northern Pacific. It was stated on behalf of defendants that they had been unable to fully present their case at the former hearing and desired this opportunity to do so. The Big Horn Collieries Company, Owl Creek Coal Company, and Board of Railroad Commissioners of Montana were granted leave to intervene. The first two are corporations engaged in mining coal at Crosby and Gebo, Wyo., respectively, and the testimony presented on their behalf was for the purpose of securing a proper rate relationship with Sheridan in rates to destinations in the three cases under consideration. The testimony presented by the Board of Railroad Commissioners of Montana was directed to the question of the reasonableness of the rates prescribed in the preceding



opinion to destinations east and west of Billings, involved in Docket No. 5078.

We will first consider Docket No. 4947, which involves rates from the mines at Sheridan to points in Nebraska and South Dakota on the line of the Chicago & North Western. In the preceding opinion, 26 I. C. C., 638, 651, the Commission held as follows:

Upon considering all the facts as presented at the hearing, we hold that joint rates should be established by the Chicago, Burlington & Quincy and the Chicago & North Western from the mines at Sheridan to the points on the Chicago & North Western, which have been specified in the complaint in No. 4947, which should in no case exceed the rate from Hudson, Wyo., to the same points of destination, except that the rate to common points of the Chicago, Burlington & Quincy and the Chicago & North Western need not be changed from that prevailing at the present time.

This decision was based in the main upon comparison of the rates prevailing from Sheridan to points of destination on the Chicago & North Western, herein involved, with those from Hudson, Wyo., to the same points of destination; rates from Sheridan to points in Nebraska upon the Chicago, Burlington & Quincy; and from Roundup, Mont., to points in North Dakota and South Dakota on the line of the Chicago, Milwaukee & St. Paul. This comparison shows that each of the carriers referred to has established much lower rates to points on its own line from western mines located on its line than those in effect from mines located on connecting carriers. It was held, 26 I. C. C., 638, 647:

No sufficient reason has been advanced for the great discrepancies in the two sets of rates. The local rates, voluntarily established by each of these carriers from the mines on their respective lines, can fairly be taken as a measure of what they consider reasonable, and if these rates should be prescribed for other hauls under substantially similar conditions the carriers could not very well object to them.

Upon the rehearing it was strongly objected by the Chicago & North Western that the rates from Hudson to points upon its line are not a just measure of rates from Sheridan to the same points of destination. In support of this contention an exhibit was filed showing that the joint-line rates ordered from Sheridan to points on the North Western would be less in some instances than the single-line rates of the Burlington from Sheridan to points equally distant. For instance the rate prescribed by the Commission for the haul of 287 miles from Sheridan to Whitney, Nebr., is \$2.20 on lump coal, while the rate carried by the Chicago, Burlington & Quincy for the haul of 208 miles from Sheridan to Belmont, Nebr., is \$2.50. We have made a more detailed examination of the coal rates from Hudson to points upon the Chicago & North Western, as compared with the rates from Sheridan to points upon the Chicago, Burlington &

Quincy and from Roundup to points on the Chicago, Milwaukee & St. Paul. A study of the rates to all of the points located from 275 to approximately 750 miles distant from the three points of origin named, shows that the rates from Hudson to points on the Chicago & North Western are on the whole higher than the rates from Sheridan to points on the Chicago, Burlington & Quincy and from Roundup to points on the Chicago, Milwaukee & St. Paul. It is true that to stations within 100 miles of Crawford the rates on the Chicago & North Western are lower than those for corresponding distances from Sheridan and Roundup, respectively, to points on the Chicago, Burlington & Quincy, and Chicago, Milwaukee & St. Paul. Beyond that point, however, for an additional distance of about 350 miles there is not a station on the Chicago & North Western at which the rate is not higher for a corresponding distance than that of the Chicago, Burlington & Quincy or the Chicago, Milwaukee & St. Paul. For example, the rate from Sheridan to stations in Nebraska on the Chicago, Burlington & Quincy which are from 430 to 587 miles distant from Sheridan is \$2.75, while for like distances from Hudson to stations on the Chicago & North Western rates range from \$2.80 to \$3.35. To stations over 587 miles from Sheridan the Chicago, Burlington & Quincy carries a rate of \$3 as far east as Woodlawn, Nebr., 689 miles distant, and beyond Woodlawn a rate of \$3.25 as far east as the Missouri River, 752 miles distant, while the Chicago & North Western carries its \$3.35 rate through to all main-line stations between 587 and 760 miles from Hudson. The Chicago & North Western further complains that the rates established by the Commission in the preceding opinion are exactly the same to stations within 37 miles of Crawford as the rate of the Chicago, Burlington & Quincy to Crawford. This results from the fact that the Chicago & North Western has blanketed these stations in its rates from Hudson which were taken as a basis for the rates prescribed by the Commission in the preceding opinion and is not a proper subject for complaint at this time.

In our preceding opinion attention was also called to the rates on coal from Illinois and Indiana fields to points of destination on the Chicago & North Western in Nebraska and South Dakota. Defendants argue that this comparison is unfair. On page 645 the following language was used:

In comparing the rates from Illinois and Indiana fields with those from the Wyoming fields it should be remembered that traffic and operating conditions are different in the two sections. Nevertheless this can not be accepted as an explanation for so great a difference in rates, especially in view of the fact that the eastern fields are so much farther removed from the points of destination and that defendants voluntarily established rates from western mines on their

own lines which allow successful competition with Indiana and Illinois coal and which are materially lower than the rates complained of in this proceeding.

While the rates from Illinois and Indiana fields were referred to in the Commission's opinion in the main for the purpose of showing that the North Western, St. Paul, and Burlington had established rates which allowed western coal to compete with Illinois and Indiana coal, they also show in and of themselves, by comparison with the rates prevailing from Sheridan to points upon the Chicago & North Western, that the latter are unreasonable.

At the rehearing several exhibits were introduced showing rates via Peoria and the Chicago & North Western from the various coal-producing groups in Illinois to destinations on the line of the North Western in Nebraska, and comparisons were made of the rates per ton per mile with the rates per ton per mile for similar distances proposed by the Commission from Sheridan. It was pointed out that in certain instances the rates per ton per mile are lower from Sheridan under the proposed rates than for similar distances from Illinois through a more favorable traffic territory. A careful examination of these exhibits, however, discloses the fact that this is true only for the longer distances. For instance, reference to Eyman, exhibit No. 3, showing the comparison of rates and distances from Peoria, Ill., to points in Nebraska with rates for similar distances prescribed by the Commission from Sheridan to points in Nebraska, shows a higher basis of rates in effect from Peoria than those prescribed from Sheridan only for distances ranging from 695 to 827 miles. For all distances less than 695 miles the exhibit shows a higher basis of rates prescribed by the Commission from Sheridan than those in effect from Peoria. It is evident that the rates for these long distances are low for competitive reasons and are not a proper basis for comparison. This is likewise true of defendant's exhibits showing rates from El Dorado, Murphysboro, Johnston City, and Spring Valley, Ill., which were cited as typical coal-producing points in Illinois. The per-ton-per-mile rates from these points are figured by the short-line distances, although the traffic moves over the longer route via Peoria and the Chicago & North Western Railway. In each instance it is found that Sheridan rates are lower per ton per mile than those from Illinois points only for long distances, and that for distances ranging between 275 and 500 miles the rates per ton per mile are almost universally higher from Sheridan. Attention should also be called to the fact that Illinois and Indiana coal is of a much higher grade of bituminous coal than that produced at Sheridan, Hudson, and Roundup.

The following comparisons are taken from exhibits filed by defendants and speak strongly for a lower basis of rates from Sheridan

than that prevailing under the combination of locals. From Peoria to Ewing, Nebr., a distance of 617 miles, the Chicago & North Western charges a rate of \$2.80 per ton, yielding 4.52 mills per ton per mile; from El Dorado to Ewing, a distance of 709 miles, the rate is \$3.35 per ton, yielding 4.72 mills per ton per mile; from Murphysboro to Ewing, a distance of 672 miles, the rate is \$3.32½ per ton, yielding 5.61 mills per ton per mile; from Johnston City to Ewing, a distance of 699 miles, the rate is \$3.35 per ton, yielding 4.79 mills per ton per mile; from Spring Valley to Ewing, a distance of 628 miles, the rate is \$2.80 per ton, yielding 4.46 mills per ton per mile; from Sheridan to Ewing, however, a distance of 572 miles, the rate under the combination of locals now in effect is \$4.15 per ton, yielding 7.25 mills per ton per mile. The rate prescribed in our preceding opinion from Sheridan to Ewing is \$3.35, yielding 5.86 mills per ton per mile.

Defendants compare the rates proposed by the Commission with those in effect from Boone and Des Moines, Iowa. The rates from mines located near Des Moines to points in Nebraska on the Chicago & North Western are in some instances higher per ton per mile, and in other instances lower, than the rates proposed by the Commission from Sheridan. From Boone the same rates prevail as from Des Moines, and since Boone is about 50 miles closer to the points of destination in Nebraska the per-ton-per-mile rates are higher than from Des Moines or from Sheridan. The per-ton-per-mile rates from Boone and Des Moines, however, are not a fair basis for comparison, because in this comparatively sparsely settled territory the rates charged are often what the traffic will bear.

Testimony was introduced showing the divisions received by the Chicago & North Western on Illinois coal destined to points upon its line in Nebraska and upon Colorado coal received at Lincoln, Nebr., and Orin Junction, Wyo. It was shown that in some instances the Chicago & North Western receives its full locals from the point of interchange. The question of divisions, however, is quite apart from that of the reasonableness of a joint rate.

It was also stated on behalf of the Chicago & North Western that although the Commission's opinion requires the publication of rates to points upon the Pierre, Rapid City & Northwestern Railway that carrier had not been made a party to this proceeding. This is a rather technical objection, since the carrier referred to is owned entirely by the Chicago & North Western and is for all practical purposes a branch of the Chicago & North Western, and since all the stations on the Pierre, Rapid City & Northwestern to which rates were required to be published were included in the complaint. To remove all uncertainty, however, counsel for the Chicago & North

Western consented at the rehearing to have this line included in the case.

Testimony was introduced showing that the Pierre, Rapid City & Northwestern runs through a very sparsely settled country; that the highest per cent ever earned was 2.58 per cent of its valuation as fixed by the state of South Dakota. The net operating revenue for the 11 months, July 1, 1912, to May 31, 1913, was given as \$10,138.64, which was a decrease from the former year of over \$24,000. This line is 165 miles long, the service is triweekly, and the capacity of engines has not been utilized to any more than 40 to 50 per cent. It is argued on behalf of the Chicago & North Western that this testimony shows conclusively that no reductions in its revenues can be made. During the calendar year 1912 there were received 224 carloads of coal at all stations on the Pierre, Rapid City & Northwestern Railway. Of these 23 cars came from Lake Michigan ports; 68 cars from Lake Superior ports; 4 cars from Illinois mines; 5 cars from stations on the Denver Western & Pacific Railway; 40 cars from stations on the Denver & Rio Grande Railroad; 18 cars from Hudson; 29 cars from points in Wyoming on the Chicago, Burlington & Quincy Railroad; 10 cars from stations on the Union Pacific; 27 cars from points on the Colorado & Southern Railway; and 5 cars from points on the Colorado & Southeastern Railway. The rates from Hudson were put into effect voluntarily by the Chicago & North Western Railway, and it would seem that they are now as high as the traffic can bear. The rate of the Chicago & North Western from both Hudson and Sheridan to Rapid City is \$2.20. The proposed rate from Sheridan to Underwood, S. Dak., a distance of  $25\frac{1}{2}$  miles beyond Rapid City, is \$3.20, of which the Chicago & North Western, on coal coming from Hudson, receives a division of \$2.95, which is considerably more than the local rate to Rapid City.

At the present hearing evidence was introduced showing a valuation in 1912 for the Chicago & North Western Railway west of the Missouri River, not including the Pierre, Rapid City & Northwestern, of \$55,000,000. This estimate is based upon the tentative valuation of the Nebraska state commission for the year 1909 of \$37,433,934, for that part of the line within the state, plus improvements and betterments since that time, plus the South Dakota valuation given for the purpose of taxation, plus the estimate of the engineers of the Chicago & North Western as to the valuation of that part of the line which is located in Wyoming. In connection with this there was introduced in evidence a statement of the financial operations for the lines west of the Missouri River, which shows that for the year 1909 the rate of return upon property in South Dakota

west of the river was 1.33 per cent, in Nebraska 6.37 per cent, and in Wyoming 3.5 per cent, or an average of 5.18 per cent. This rate of return, according to the statement introduced, has greatly decreased until in 1912 the Wyoming line was operated at a deficit of \$79,000, the Nebraska line at a net profit of 4.87 per cent, and the South Dakota line of 1.62 per cent, or average net earnings on the whole line west of the Missouri of 3.48 per cent. It is alleged that these figures show it to be unreasonable to require the reductions which will be incident to the order in this case.

We have given careful consideration to the objections brought forward at the rehearing, but in determining what will be reasonable joint rates from Sheridan to points on the Chicago & North Western, we find nothing to dissuade us from basing our judgment upon the comparison of rates from Hudson, Sheridan, Roundup, and Illinois and Indiana mines. As compared with rates from other points of origin, the Hudson rates, taken as a whole, are not unreasonably low. They were established voluntarily by the Chicago & North Western, and so were the rates from Sheridan to points on the Chicago, Burlington & Quincy, and from Roundup to points on the Chicago, Milwaukee & St. Paul. It can fairly be taken as conclusive that the rates so established by these carriers are as high as they thought they should be, and that higher rates from Sheridan would probably prevent the normal movement of coal. The testimony shows that from Hudson and Wyoming mines on the Chicago & North Western, the shipment of coal to Chicago & North Western stations in Nebraska and South Dakota was 1,345 cars in 1911 and 2,066 cars in 1912; from Illinois mines, 856 cars in 1911 and 1,470 cars in 1912; while from Sheridan mines the shipment was 926 cars in 1911 and 922 cars in 1912. While Hudson and Illinois operators increased their shipments into this territory about 50 per cent, Sheridan remained stationary. It has been frequently testified throughout this proceeding that Sheridan coal sells at the same price as Hudson coal, and it is evident that the result of the inequality of rates between Hudson and Sheridan is to charge the consumer a higher price for coal than would result under competition upon an equal footing. In the face of the comparatively low rates from Hudson, Sheridan, and Roundup to the points along the line upon which these mines respectively are located, and in the absence of an allocation of cost figures such as would show the actual financial status of the coal business of these carriers, we are unable to reach any other conclusion than that the Sheridan coal should move to points upon the Chicago & North Western at the same rate enjoyed by Hudson.

A great deal was said at the rehearing and in briefs of the parties with reference to the power of the Commission to base its decision in this case upon discrimination as between Hudson and Sheridan. It is possible for a carrier to discriminate unjustly and unlawfully against a point which it does not reach over its own rails.

There remains for consideration the contention on behalf of defendants that the Commission was in error in not allowing anything additional in the rates prescribed from Sheridan over the rates from Hudson, on the ground that the former involves a two-line haul. A diagram was filed in evidence showing the situation of the Chicago, Burlington & Quincy and Chicago & North Western tracks and the points of interchange at Crawford. No expensive terminals, however, are disclosed. Hudson and Sheridan coal is transported in box cars. At Crawford the trend of movement of loaded box cars is toward the west, and cars used for loading at Hudson are, as a rule, made empty west of Crawford. It was testified on behalf of the North Western that the effect of receiving any great quantity of coal in exchange at Crawford would be that North Western cars going west loaded would return empty, while cars coming from the Burlington to the North Western would have to be returned to the Burlington empty. This statement is apparently predicated on the assumption that Hudson coal would not be sold in as large quantities as at present, which we believe is erroneous. On the assumption that there would be nothing coming from the west of Crawford if the new rates went into effect, it was stated that it would be necessary to handle the coal from Crawford to Chadron by crews that would leave Chadron and run to Crawford to pick up the cars and return. The past practice, however, has been to receive coal from the Chicago, Burlington & Quincy at Crawford by picking up the cars on through trains whenever practicable, and otherwise to wait until a trainload had accumulated at Crawford, and then send an engine up from Chadron to take that trainload. This seems to be a comparatively inexpensive method of interchange, and we see no reason why it should not continue in the future. Reference was made in the previous opinion to *Rates from the Walsenburg Coal Field*, 26 I. C. C., 85, where an additional charge of 10 cents was allowed in the rate from the Walsenburg field as compared with that from the Cañon City field to the same destinations. On page 89 of the opinion in this case the Commission held as follows:

The Cañon City district, as we understand the matter, involves an average haul to Pueblo of some 15 or 20 miles less; if the spur tracks be included in each case, the advantage in favor of the latter field is possibly still greater. Ordinarily a difference of only 15 or 20 miles in hauls of the length involved to these Kansas destinations might be disregarded; but we think the additional

service should not be overlooked in this instance in view of the particularly severe operating expenses on the Colorado & Southern and Denver & Rio Grande from the Walsenburg mines to Pueblo. Moreover, while there is no fixed rule requiring a higher rate for a two-line than for a one-line haul of equal length, we think in this case reasonable recognition may be given in the rates to the fact that the movement from these mines is over two lines.

It should be noted that the additional allowance was made only in consideration of the excess in distance and the greater operating difficulties in the Walsenburg field. The haul from Cañon City mines is over one line, while the haul from the Walsenburg fields involves two lines. The haul from Sheridan is 30 miles less than from Hudson, and involves no severe operating conditions such as were found to exist in the Walsenburg field.

The opinion of the Commission does not require the publication of joint rates to common points of the Chicago & North Western and the Chicago, Burlington & Quincy. It is alleged that this will result in a higher rate, namely, the combination of locals to common points, than the rate fixed to points beyond, thus entailing a violation of the fourth section of the act to regulate commerce. O'Neill, Nebr., is given as an example, to which point the combination rate of \$4.07 would remain effective, while the rate to points beyond is fixed at \$3.35.

There are 14 common points of the Chicago, Burlington & Quincy and Chicago & North Western in Nebraska. In the original opinion no specific route was established by which the traffic from Sheridan should move under the prescribed rates. Should all the traffic, including that to stations on the Chicago & North Western in the South Platte territory, be routed via Crawford, the contention of the North Western would be correct, namely, coal moving via Crawford to common points would take a higher rate than to local points of the North Western beyond. With the exception of O'Neill and Plainview, however, the rates of the Chicago, Burlington & Quincy to common points with the North Western are as low as and in many cases lower than the rates of the North Western from Hudson. Consequently via these junction points the Chicago, Burlington & Quincy affords a routing which involves no conflict with the fourth section, and it is our opinion that traffic destined to points on the Chicago & North Western east of Norfolk, Nebr., should be routed through the junction point with the Chicago, Burlington & Quincy nearest the point of destination. If, however, the carriers agree upon one or more preferred points of interchange, routing via these junctions will, upon application, be permitted and relief granted from the fourth section where found proper. The route of the Chicago, Burlington & Quincy to O'Neill and Plainview is very circuitous, the route via Crawford



and the Chicago & North Western being much more direct. Consequently, coal moving from Sheridan to points on the North Western beyond O'Neill and Plainview may properly be routed through Crawford. The complaint in this case does not cover rates to O'Neill and Plainview and the Commission can, therefore, make no order revising the rates from Sheridan to these destinations. The prohibitions of the fourth section, however, are such as to require defendants either to publish joint rates or to revise the combination of locals to O'Neill and Plainview so that they will not exceed the rates herein established via Crawford to more distant stations.

It is admitted by the Chicago, Burlington & Quincy that all proper reductions from Sheridan should be met with equal reductions from Kirby. This has already been done as to destinations on the Chicago Milwaukee & St. Paul, which are involved in Docket No. 5079. The rate from Kirby to Crawford, Nebr., and Edgemont, S. Dak., is \$1 over the rate from Sheridan to the same destinations. This differential should be maintained to destinations on the Chicago & North Western by the establishment of joint rates from Kirby no higher than \$1 above the rates to be established from Sheridan. An appropriate order will be entered in Docket No. 4947.

Chicago, Burlington & Quincy tariff I. C. C. No. 10792, which became effective July 1, 1913, published the rates prescribed in our preceding opinion to destinations upon the Chicago, Milwaukee & St. Paul involved in Docket No. 5079. This tariff also provides joint rates from Kirby to the same destinations which are \$1 higher than from Sheridan. At the rehearing complainants requested that the order of the Commission in this case be extended east of the Missouri River. The situation east of Chamberlain, however, is not properly before us at this time. The Commission's opinion having been complied with, no further order is necessary in Docket No. 5079.

Docket No. 5078 involves joint rates on coal from Sheridan to points along the line of the Northern Pacific and connecting carriers in Montana, North Dakota, Idaho, Washington, and Oregon. published in Chicago, Burlington & Quincy tariff I. C. C. No. 9887. Our decision in this case was based upon a comparison of local rates from Sheridan, Wyo., and Red Lodge, Mont., to Billings, Mont. In the preceding opinion, 26 I. C. C. 638, 653, it was stated:

\* \* \* The local rate from the mines at Red Lodge, Bridger, Joliet, and Fromberg to Billings is 75 cents, while the local rate from Sheridan to Billings is \$1. The difference of 25 cents would be, in our opinion, a reasonable allowance for the difference in the distance from Sheridan and from the Northern Pacific mines to points of destination within 500 miles. \* \* \*

The rate situation involved in this case was not fully disclosed at the original hearing, so that the Commission did not have before it

all the facts bearing thereon. From Sheridan to Billings the rate on lump coal is \$1 per ton, yielding a per-ton-mile revenue of 7.8 mills for the average distance of 187 miles from the mines. The distance from the mines at Sheridan is somewhat less than from Sheridan proper. The Red Lodge rate to Billings is 75 cents per ton, and yields a per ton-mile revenue of 12.7 mills for a distance of 59 miles. For a distance of 140 miles, Red Lodge to Sanders, Mont., the rate is \$1.20, yielding 8.57 mills per ton-mile. These comparisons show that the difference between the local rates from Sheridan and Red Lodge to Billings is not the proper basis for a differential in rates to the points involved in this case. Billings is a highly competitive point, and it would seem that the rate from Sheridan has been made low so as to allow competition with coal closer at hand. Rate comparisons were made on behalf of defendants showing that the proposed basis, 25 cents over Red Lodge, would result in a lower per-ton-mile rate from Sheridan to points on the Northern Pacific than that prevailing from Hudson, Sheridan, and Roundup, respectively, to points on the Chicago & North Western, Chicago, Burlington & Quincy, and Chicago, Milwaukee & St. Paul, and from other western coal fields.

The Board of Railroad Commissioners of Montana appeared as interveners in this case on behalf of the coal operators at Bear Creek, Mont. The testimony presented shows that the competition of Sheridan coal is with Bear Creek rather than with Red Lodge, and that while the Red Lodge rate also applies from Bridger, Fromberg, and Joliet, there is very little coal mined at these points. The only mines at Red Lodge are those of the Northwestern Improvement Company, all of the stock of which is owned by the Northern Pacific Railway. All of the coal here mined is consumed by the railroad, with the exception of slack coal, a product incidental to the preparation of coal for locomotives.

The mines at Bear Creek produce commercial coal in competition with Sheridan and Kirby mines. They are served by the Montana, Wyoming & Southern Railway, extending from Washoe to Bridger, Mont., a distance of about 30 miles through the Bear Creek fields, and connecting with the Northern Pacific at the latter point. This line is entirely dependent upon the coal traffic which it receives from the mines in the Bear Creek district.

The history of the rates from Bear Creek was gone into in great detail at the rehearing. In 1909 the Railroad Commission of Montana reduced the Montana, Wyoming & Southern's proportional rate, Bear Creek to Bridger, to 35 cents, and required the Northern Pacific to absorb 10 cents of this 35 cents, the result being that coal from the Bear Creek mines took a rate under this order only 25 cents in

excess of the Red Lodge rate. At the end of a year's operation under this order of the Commission it was shown that the Montana, Wyoming & Southern had suffered a loss of about \$14,000, and a proceeding was begun in the Federal court to enjoin the Commission from enforcing the 35-cent rate. The court directed the restoration of the 45-cent rate, which the Montana, Wyoming & Southern receives at the present time, but of which 10 cents is paid to it by the Northern Pacific.

A large part of the testimony offered by the Board of Railroad Commissioners of Montana had to do with the cost of producing coal at Bear Creek and Sheridan. The conclusion was drawn that Sheridan operators can produce coal at less per ton than can the Bear Creek operators, and it was argued that this should be taken into consideration in fixing rates. The difference in cost of production, however, can not be recognized as a basis for the adjustment of freight rates between different localities. In the case entitled *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, 163, it was held:

While commercial and industrial conditions often enter into the determination of a reasonable transportation charge, it is no part of our duty to so adjust rates that business will or will not be done at a particular point, and that is especially true of a case like this, where no natural advantage is possessed by any locality.

Each one of these rival packing houses is entitled to a reasonable rate upon the live animal from various points of production, and those rates should be fairly related one to another. Each packing house is also entitled to a reasonable rate upon its product to various markets of consumption, and these rates, again, should be fairly adjusted with reference to one another. Any locality which remains at a disadvantage after this has been done must sustain that burden, which is due to its location with respect to this business.

In the case of *Colorado Coal Traffic Asso. v. C. & S. Ry. Co.*, 18 I. C. C., 572, 576, the Commission used the following language:

\* \* \* Complainant's members insist that they require a better rate on their product because it costs more to mine coal in the Walsenburg district and because Rock Springs coal finds readier sale for domestic uses. These are conditions which carriers ought not to be required to equalize by rate adjustments. \* \* \*

Although Sheridan and Bear Creek come into direct competition in the sale of coal, we are unable, on account of the operating conditions on the Montana, Wyoming & Southern, to base the contemplated readjustment of Sheridan rates upon a comparison with the rates in effect from Bear Creek. The testimony shows that the grade on the line of the Montana, Wyoming & Southern is so heavy that it permits the hauling of but 17 empty cars up grade and no more than 40 loaded cars down grade. Ninety per cent of the equipment used at Bear Creek is furnished by the Northern Pacific. Fully 65 per cent of the

line is curves sharper than 8 degrees. The road was expensive to build and is expensive to maintain, the greater portion being built through an extremely mountainous country. The haul from Red Lodge to Billings is more like that from Sheridan to Billings than the haul from Bear Creek. From Bear Creek rates are fixed 35 cents over Red Lodge. We find that by applying to the haul from Sheridan to points east of Billings rates 40 cents over those prevailing from Red Lodge, and to points west of Billings 55 cents over Red Lodge, the two points of production are placed upon approximately the same per-ton-mile basis.

The Big Horn Collieries Company is located at Crosby, Wyo.,  $2\frac{1}{2}$  miles southwest of Kirby, Wyo., and the Owl Creek Coal Company is located at Gebo, Wyo.,  $2\frac{1}{2}$  miles west of Kirby. The Kirby rates to points involved in Docket No. 5078 are in nearly all instances 35 cents over the rates in effect from Sheridan, except that between Spokane and Ellensburg, Wash., and at Laurel, Mont., the rates are the same. The contention of the Kirby interests is that the same rates should be established from Kirby, Wyo., to points on the Northern Pacific and connecting roads west of Billings, Mont., as are established from Sheridan, Wyo., to those points, and that to points on the Northern Pacific east of Billings in all cases at least the same reduction should be ordered in the Kirby rates as may be ordered in the Sheridan rates, and that as the length of the haul increases the existing 35-cent differential against Kirby in favor of Sheridan be decreased.

Kirby is a station on the Thermopolis-Billings branch of the Chicago, Burlington & Quincy, a comparatively new line, through a sparsely settled country, with comparatively light density of tonnage and high cost of operation. The mines in the Kirby district are an average distance of 171 miles from Laurel, Mont., being 127 miles farther distant than Red Lodge to all of the points of destination involved, 19 miles farther distant to points west of Billings, and 49 miles to points east of Billings than Sheridan. The freight earnings per mile on the Kirby branch were given as \$1,455, as against \$6,360 for the entire system of the Chicago, Burlington & Quincy. It was stated that upon the Thermopolis branch the service is tri-weekly, 85 per cent of the tonnage is coal, and the cars in which the coal is hauled out are practically all hauled in empty. The varying differences between the rate from Kirby and the rate from Sheridan to western territory was explained to have resulted from the competition of other coals not mined on the Burlington, the rate of both Sheridan and Kirby having been forced down to a competitive basis.

It is conceded by representatives of the Chicago, Burlington & Quincy that wherever reductions are properly made from Sheridan,

Kirby is entitled to equal reductions—in other words, that Kirby's present relations to Sheridan should be preserved. It was further stated that it had been the intention of the carriers when the Sheridan rates were finally fixed to reduce the Kirby rates so that they should not exceed the Sheridan rates by more than 20 cents. As to distances east of Billings, however, it is argued that the intervening petition makes no complaint of the existing differentials between Kirby and Sheridan, and that the only relief to which the interveners are entitled would be the same reductions as from Sheridan. As illustrative of the reasonableness of the 35-cent differential, it was stated that the local commercial coal into Billings, exclusive of coal for the beet-sugar plant, which is contract business, amounted to 588 cars from the Sheridan field and 290 cars from the Kirby field during the year ending April 30, 1913. It is agreed that considering the great differences of tonnages produced in the two fields this distribution in this common market on the Chicago, Burlington & Quincy is fair to the Kirby producer.

We find that by applying from the mines at Kirby to points east and west of Billings rates 50 cents over those prevailing from Red Lodge the two points of production are placed on approximately the same per-ton-per-mile basis. Taking into consideration the fact that the Thermopolis-Billings branch of the Chicago, Burlington & Quincy is a branch line through a sparsely settled country, this differential may be raised 15 cents, resulting in a charge of 65 cents from Kirby to points of destination involved in this case over the prevailing rates from Red Lodge. Upon this basis coal originating at Kirby will be paying 25 cents over Sheridan to points of destination east of Billings and 10 cents over Sheridan to points of destination west of Billings.

At the rehearing no evidence was produced convincing us that our previous conclusion denying any additional allowance for a two-line haul was unjust or otherwise improper.

The differentials we have suggested in the rates from Sheridan and Kirby, as compared with the rates from Red Lodge, are, in our opinion, a reasonable allowance for the difference in distance to points of destination within 500 miles. To points between 500 and 600 miles from Sheridan these differentials should be decreased 10 cents, and for each 100 miles additional a further reduction of 10 cents should be made in the differentials which we have prescribed.

An appropriate order will be entered in this case.

INVESTIGATION AND SUSPENSION DOCKET No. 201.  
COMMODITY RATES BETWEEN MISSOURI RIVER  
POINTS.

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*Submitted May 1, 1913. Decided October 6, 1913.*

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1. Proposed increased rates on commodities between Missouri River points not found to result in excessive revenue to respondents, and when certain modifications shall have been made as agreed between respondents and protestants order of suspension will be vacated and investigation discontinued.
2. While the law casts upon respondents the burden of showing that the increased rates are reasonable, it is but fair that parties at whose instance suspensions are ordered should present to the Commission all facts, circumstances, conditions, or reasons which, in their opinion, tend to show that the increases should not be allowed.

*H. G. Wilson* for Transportation Bureau of the Commercial Club, Kansas City, Mo.

*E. J. McVann* for Traffic Bureau of the Commercial Club, Omaha, Nebr.

*H. G. Krake* for Commercial Club, St. Joseph, Mo.

*George T. Bell* for Traffic Bureau, Sioux City, Iowa.

*F. J. Shubert* for Chicago, Rock Island & Pacific Railway Company.

*F. Montmorency* and *George H. Crosby* for Chicago, Burlington & Quincy Railroad Company.

*Henry G. Herbel* for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

**McCHORD, Commissioner:**

Carriers operating between Missouri River points proposed to advance a number of commodity rates, but upon protest of commercial bodies at Kansas City, Mo., Omaha, Nebr., and St. Joseph, Mo., the schedules naming the increased rates were suspended until May 1, 1913, and later resuspended until November 1, 1913. The tariffs involved are: Chicago, Burlington & Quincy Railroad Company, I. C. C. No. 10700, effective January 2, 1913; Chicago Great Western Railroad Company, I. C. C. No. 4879; Chicago, Rock Island & Pacific

Railway, I. C. C. No. C-9420; Missouri Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, I. C. C. No. A-2229; and Wabash Railroad supplement No. 2 to I. C. C. No. 3135 and I. C. C. No. 3149.

There is no need of setting out the numerous commodities affected. Suffice it to say that the increases were to be accomplished by advances in the commodity rates or by the establishment of class rates on certain articles heretofore accorded a commodity rating. While several items were later more specifically attacked, the original protest asked a suspension of the schedules in their entirety because:

Your petitioners have but recently received these increased tariff schedules and have had no opportunity to discuss with the several members of these organizations the effect of these proposed increased rates on their respective traffic and will not have an opportunity to make an investigation of this kind of sufficient detail to be able to determine by December 21 (the last date on which these petitioners may file application for suspension) and, therefore, respectfully petition the Honorable Interstate Commerce Commission that an order be issued suspending the above-named tariff schedules. \* \* \*

As a result of a conference between protestants and carriers, held prior to the hearing, it was agreed that certain of the present rates be continued, some modification made in a few of the advances, and the protest withdrawn as to practically all of the other increases excepting those upon blue vitriol, furniture, and linseed oil to and from Kansas City.

Between Kansas City and St. Joseph the existing rate on furniture is 7 cents, with a graduated minimum according to the length of the car based upon 16,000 pounds for 36-foot equipment. It is proposed to increase this rate to 9 cents without change in minimum, while the present rate of 7 cents between Leavenworth, Kans., and St. Joseph, Mo., is sought to be increased to 8 cents. Likewise, an advance from 7 to 8 cents is proposed between St. Joseph and Leavenworth, and from 5 to 7 cents between St. Joseph and Atchison, Kans. At the increased rates the per-car revenue will amount to \$11.20 at the 7-cent rate, \$12.80 at 8 cents, and \$14.40 at 9 cents, for hauls of more than 60 miles. Between the lower and the upper Missouri River cities—Kansas City and Omaha—an increase from 10 cents, minimum 25,000 pounds, to 13 cents, at the same minimum was proposed, but this was modified by respondents, who agreed to make the minimum 20,000 pounds at the increased rate. This will make an increase of \$1 in the per-car revenue at the minimum weight, and it is in evidence that most of the cars, particularly those from Omaha, are loaded lighter than 20,000 pounds. This change was made with the approval of all the protestants except the commissioner of the board of trade of Kansas City, who contested any advance whatever in the furniture rates.

On blue vitriol the present rate between Kansas City and Omaha is 10 cents. It is proposed to advance this to 12½ cents. Ordinarily this article takes the fifth-class rate, which, between these points, is 16 cents. Only Kansas City protests this advance.

The linseed-oil rate of 9 cents between upper and lower Missouri River crossings is proposed to be made 10 cents; between the lower crossings the existing 7-cent rate is sought to be made 8 cents. Kansas City also objects to this advance.

This constitutes all of the advances that may be said to be protested and the protest comes wholly from Kansas City. Among the proposed advances which are to be withdrawn or modified and against which protest has been recalled are:

Glucose, between lower Missouri River crossings, from 5 to 8 cents; adjusted at 6 cents.

Glucose, between lower and upper crossings, from 8 to 11 cents; adjusted at 10 cents.

Ice, between upper and lower crossings, from 5 to 6 cents; advance to be withdrawn.

Canned goods, advance withdrawn and modification of commodity description to be made.

Shot, advance in minimum weight from 30,000 to 40,000 pounds; adjusted at 36,000 pounds.

Soap, advance of 3 cents; adjusted at 1½ cents.

The reasons given by respondents for the proposed advances are that many of the commodities affected do not actually move and there is no necessity for a continuation of commodity rates; hence a reversion to the class basis; that discrepancies in rates between the various lines serving the cities interested were sought to be removed, and that many of the existing rates were too low. That many of the rates are obsolete seems to be admitted and, with the so-called concession made by respondents, Kansas City is the only remaining protestant. It offered no witness and its complaint, as expressed by its transportation commissioner, its sole representative, is more against the quantity and extent of the advances than their effect upon Kansas City business. No shipper or consumer appeared and no evidence was offered to show the extent of the movement of commodities affected by the increases sought. In fact, it was admitted by this protestant that no compilation showing the monetary effect of these increases upon the Kansas City shipper or consignee had been prepared. While the law casts upon the respondents the burden of showing that the increased rates are reasonable, it is but fair that the parties at whose instance suspensions are ordered should present to the Commission all facts, circumstances, conditions, or reasons which, in their opinion, tend to show that the increases should not be allowed.



The proposed rates on furniture amount to an increase of \$1 per car between Kansas City and Omaha, and from \$1.60 to \$3.20 per car between Kansas City and St. Joseph. When it is considered that the per-car revenue at the advanced rates in the one case is but \$26, and in the other not in excess of \$14.40, and that the hauls are 200 miles and 60 miles, respectively, the increased rates can not be said to afford excessive revenue. This is also true of the proposed increase of \$7 in the minimum per-car revenue on blue vitriol, the rate sought yielding \$37 per car for 200 miles.

While the record in this proceeding is not such as enables us to consider in detail the individual advances, and nothing herein shall prejudice a specific attack thereon, we are constrained to allow the increased rates to become effective when the modifications agreed upon between the protestants and respondents shall have been made. The carriers will be expected to continue their present rates in force until the modifications referred to have been established. An order discontinuing this proceeding will then be issued.

28 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 247.

SANDSTONE, MINN.—MISSOURI RIVER BUILDING STONE  
RATES.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF BUILDING STONE BETWEEN SANDSTONE AND BANNING, MINN., AND KANSAS CITY AND OMAHA.

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*Submitted July 15, 1913. Decided October 7, 1913.*

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Respondents published joint commodity rates on building, curbing, and paving stone from Sandstone and Banning, Minn., to Kansas City, Omaha, and other Missouri River points, and provided in their tariff that upon request therefor they would establish rates no higher from intermediate points. Upon request for the establishment of such rates from an intermediate point, respondents filed cancellation of the rates from Sandstone and Banning; *Held*, That respondents have failed to show that the resulting increased rates would be reasonable; that the existing rates are, and for the future will be, reasonable; and that respondents should establish rates no higher from intermediate points upon proper request therefor.

*John F. Finerty, jr.*, for Great Northern Railway Company.

*J. N. Davis* for Chicago, Milwaukee & St. Paul Railway Company.

*R. G. Brown* for Chicago, Rock Island & Pacific Railway Company.

*Lightner & Young* for Drake Marble & Tile Company and C. H. Young Company.

*T. A. McGrath* for St. Paul Association of Commerce and Drake Marble & Tile Company.

REPORT OF THE COMMISSION.

CLARK, *Chairman*:

On protest of C. H. Young Company and Drake Marble & Tile Company, dealers at St. Paul, Minn., in building stone and other articles analogous thereto, the Commission suspended to February 13, 1914, supplements Nos. 9 and 12 to Western Trunk Lines tariff, I. C. C. No. A-364.

This tariff contained rates on building, curbing, or paving stone from Banning and Sandstone, Minn., to Kansas City, Mo., and other Missouri River points 12 cents and to Omaha 11 cents per 100 pounds. It also contained a provision that by authority of rule 77 of the Commission's Tariff Circular 18-A, these rates were not made applicable

from all intermediate points, but that upon reasonable request therefor rates no higher would be established on short notice from any intermediate point. The suspended items propose to cancel these rates.

Sandstone is local to the line of the Great Northern about 63 miles south of Duluth. The only dealer in stone located at that point is the Kettle River Company. Banning is local to the Northern Pacific Railroad and is situated cross-country from Sandstone.

Some time prior to July 1, 1908, the Kettle River Company made application to the Great Northern for the establishment of a commodity rate on paving blocks to Kansas City. Thereupon the Great Northern established the rate of 12 cents and, allegedly in error, made it also applicable to building stone. There has been no movement of building stone from Sandstone to Kansas City, and within two years no movement of paving blocks. Shipments from Sandstone could be routed via Sioux City in connection with the Chicago, Burlington & Quincy and Chicago & North Western, and also via the St. Paul gateway in connection with any of the St. Paul to Kansas City lines. The Great Northern has a haul of 360 miles from Sandstone to Sioux City, but its haul to St. Paul is but 97 miles. It therefore receives a better division of the rate via Sioux City than via St. Paul.

On January 13, 1913, the St. Paul Association of Commerce asked that the carriers be urged to recognize the clause relative to rates from intermediate points and establish a 12-cent rate on building stone from St. Paul to Kansas City. This request was brought to the attention of the chairman of the Western Trunk Line Committee, who, as joint agent for the carriers, published and filed the tariff. Instead of recognizing the provision as to the establishment of intermediate rates, the carriers, admittedly, filed proposed cancellation of the rates from Banning and Sandstone, expressly for the purpose of preventing their application at intermediate points.

It is alleged that this request called to the attention of the carriers the fact that the commodity rates from Banning and Sandstone on building stone were still in effect, and on inquiry it was found that there was no movement thereunder. Inquiry was made of the Kettle River Company as to whether or not it desired the 12-cent rate on building stone continued in effect, and that company replied that it had made no shipments of building stone from Sandstone to Missouri River territory or Omaha, and did not see any reason why the rate should be continued in effect.

Respondent Great Northern Railway Company takes the position that the clause in reference to the establishment of rates from and to intermediate points does not place upon the carriers the obligation of establishing the same or a lower rate from intermediate

points, but is simply the permission of the Commission to establish such rates under authority of the Commission on one day's notice to the public and to the Commission. It, therefore, declined to submit any testimony as to the reasonableness of the class rates from Sandstone and St. Paul to Kansas City, which are 19 and 17 cents per 100 pounds, respectively, on the ground that as to the Sandstone rate the fact that there is not and has not been for a considerable period any movement thereunder is sufficient justification for the cancellation of the commodity rate, and as to the St. Paul rate, because it is not interested in traffic from St. Paul to Kansas City. The Great Northern feels that unless protestants can demonstrate an interest in the rates from Sandstone and Banning and desire the establishment of a 12-cent or lower rate from St. Paul to Kansas City, that issue must be brought to the attention of the Commission in an appropriate proceeding, complaining of the unreasonableness of the 17-cent class-E rate from St. Paul to Kansas City. It contends that protestants, located as they are at St. Paul, have no interest in the rates on building stone from Banning and Sandstone, and that the reasonableness of the rate from St. Paul to Kansas City is not in issue in this proceeding. The distance tariff rate of the Chicago Great Western from St. Paul to Kansas City is 16 cents.

The position taken by the Great Northern is not tenable. Rule 77 of the Commission's Tariff Circular 18-A was adopted solely as a feasible and economical plan under which commodity rates might be published from known points of production or to known points of consumption without also publishing commodity rates from or to all intermediate points, which perhaps, or even probably, would never forward or receive shipments of that commodity. The carrier that adopts this means of relief from the long-and-short-haul provision of the act is, however, required to provide in its tariff, as did these respondents in this instance, that upon reasonable request therefor rates will be established on short notice from or to any intermediate point which will not be higher than those to the next more-distant point. It constitutes the consent of the Commission to the use of the rule and to the establishment of rates on short notice thereunder and in accordance therewith, but it requires that the carrier shall incorporate in its tariff the provision that upon proper request it will establish rates from the intermediate point in accord with the rule and the tariff provision. Manifestly a carrier may not employ this rule for the purpose of giving a rate to a point which it desires to accommodate or favor and then when it is called upon to accord to intermediate points the rates to which, under the law, they are entitled, escape its obligation by simply canceling the arrangement. The use of this rule and plan for publishing commodity rates does not

deprive the intermediate points of any of their lawful rights and its incorporation in a tariff is a recognition of the rights of the intermediate points under the long-and-short-haul rule and a published guaranty that those rights will be recognized and protected upon demand. That guaranty must be observed in full and in good faith.

It is true that the Great Northern is not particularly interested in the rates from St. Paul to Kansas City, but here we have a joint tariff issued by the joint agent of respondents in which they provide the rate from Sandstone and Banning to Kansas City and agree to establish upon request therefor a rate from any intermediate point that shall not be higher. They are requested to establish the same rate from the less-distant intermediate point, St. Paul, and reply that rather than to live up to the assurance given by them in their tariff they will cancel same.

The cancellation of the commodity rates has the effect of leaving higher rates the only ones applicable. It is therefore an instance of increased rates in which the burden is upon respondents to prove the reasonableness of the increased rates. This they have not undertaken to do, except by showing that traffic did not move under the lower rates. They allege that building stone was included under the commodity rates through error. This allegation does not impress us strongly in face of the fact that the rates have been in effect for more than five years.

The situation as to the establishment of the 12-cent rate from Banning would appear to be—although the testimony is not conclusive in that connection, no representative of the Northern Pacific being present at the hearing—similar to that in connection with the Sandstone rate. The only difference is that in transporting stone from Banning to Kansas City the Northern Pacific must haul it through St. Paul.

While respondents have furnished no evidence in support of the reasonableness of the increased rates, the record shows, and the tariffs on file confirm, the existence of the following rates on building stone, in cents per 100 pounds, applicable via the lines of respondents herein:

From—	To—	Distance.	Rate.
		<i>Miles.</i>	<i>Cents.</i>
Duluth, Minn.....	Merbert, Mo.....	564	10
St. Paul, Minn.....	Mexico, Mo.....	541	10½
Chicago, Ill.....	St. Paul, Minn.....	410	8
St. Paul, Minn.....	St. Louis, Mo.....	576	10½
Sandstone, Minn.....	do.....	688	14
St. Paul, Minn.....	Kansas City, Mo.....	576	17

The rate of 12 cents from Sandstone or Banning to Kansas City being a joint through rate, it necessarily follows that the lines from St. Paul to Kansas City receive less than 12 cents per 100 pounds for their haul. It is generally true that a carrier may reasonably accept less than its local rate as its division of a joint rate, and we refer to this only as significant when taken in connection with the apparent indifference toward this case on part of the respondents other than the Great Northern. Only two of the St. Paul-Kansas City lines appeared, and those two contributed nothing in support of the reasonableness of the increased rates. We attach no especial importance to the fact that protestants' interest in the rate from St. Paul to Kansas City was stimulated by securing a contract for stone to be used in a railroad station at Kansas City.

Respondents have not met the burden cast upon them by the statute of showing the proposed increased rates to be reasonable. We, therefore, find that the existing rates on building, curbing, and paving stone from Banning and Sandstone, Minn., to Kansas City, Mo., and points taking the same rate, and to Omaha, Nebr., and points taking the same rate, are and for the future will be reasonable maximum rates. We are also of the opinion that respondents should at once comply with the request that they establish rate on building stone from St. Paul to Kansas City not higher than the rate from Sandstone or Banning to Kansas City, and hereafter conform to the provision of their tariff, and upon proper request therefor establish rates from any intermediate point, not higher than apply from the next more-distant point.

An order will be entered in accordance herewith.

No. 5041.

CRUTCHFIELD, WOOLFOLK & CLORE ET AL.

v.

FLORIDA EAST COAST RAILWAY COMPANY ET AL.

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No. 5041 (Sub-No. 1).

M. GEORGE & COMPANY ET AL.

v.

SAME.

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*Submitted December 17, 1912. Decided October 6, 1913.*

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Rates charged by defendants for transportation of vegetables in mixed carloads and potatoes in hampers from points on the line of the Florida East Coast Railway, in Florida, to Chicago, Ill., found unreasonable.

*Alfred Owen Davies* for complainants.

*Alex St. Clair-Abrams* for Florida East Coast Railway Company.

*Frank W. Gwathmey* for Atlantic Coast Line Railway Company; Georgia Southern & Florida Railway Company; Mobile & Ohio Railroad Company; Central of Georgia Railway Company; Nashville, Chattanooga & St. Louis Railway; Cincinnati, New Orleans & Texas Pacific Railway Company; Seaboard Air Line Railway; Southern Railway Company; and Illinois Central Railroad Company.

*William W. Collin, jr.*, for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

Complainants are commission merchants and dealers in fruits and vegetables at Chicago, Ill. The petitions attack as unreasonable and unduly discriminatory the charges collected by defendants on numerous shipments of vegetables, including potatoes in packages, from points on the Florida East Coast Railway, in Florida, to Chicago.

Rates on vegetables from producing points in Florida to northern points are made upon a crate basis, the through rate being constructed by adding to the proportional rates from Jacksonville and South Jacksonville, Fla., to destination, the proportional rates of the Florida East Coast Railway from the points of origin to Jacksonville or South Jacksonville.

The original complaint has reference to 17 carloads of potatoes in hampers shipped from Arch Creek, Dania, Deerfield, Fort Lauderdale, Lemon City, Little River, and Miami to Chicago, Ill., during February, March, April, and May, 1912. The hampers in which the shipments were transported were cone shaped and measured inside  $9\frac{1}{2}$  inches in diameter at the base, 15 inches in diameter at the top, and 15 inches in height. The content of this package is slightly in excess of 1,804 cubic inches, or 5 quarts less than a bushel.

The tariff of the Florida East Coast, I. C. C. No. 216, in effect at the time the shipments moved, contained the following provision:

Rates published herein on vegetables, n. o. s., apply when in standard crates 8 x 14 x 22 inches or smaller cubical capacity estimated to weigh 50 pounds, and also when in crates of larger cubical capacity but lighter weight. When in crates of larger cubical capacity than 8 x 14 x 22 inches and weighing more than 50 pounds, there will be a pro rata increase of the weight per crate according to the increased size of the crate, regardless of weight, provided that the weight is in excess of 50 pounds. On vegetables (except eggplant and squash) shipped in orange or pineapple boxes apply 200 per cent of the standard crate rate as published herein.

The standard crate specified in the above tariff contained 2,464 cubic inches, or 666 cubic inches more than the hamper that was used in the shipments involved. The shipments were charged the rates applicable to vegetables, n. o. s. The weight was ascertained on the estimate of 50 pounds to the hamper. The tariff carrying the item above quoted did not specifically name rates on potatoes in hampers. There was in the tariff the following item:

Rates on potatoes as published in fruit and vegetables tariff No. 4, I. C. C. 206, are hereby canceled. Future rates will be published in I. C. C. 217, supplement thereto or reissues thereof.

I. C. C. 217, referred to, names rates on potatoes in barrels only.

It is complainants' contention that the Florida East Coast at the time of the shipments in question had no provision in any of its tariffs covering potatoes shipped in hampers of the size used. The defendants assert that it had been customary for the Florida East Coast to publish in its fruit and vegetable tariff under the item "vegetables, n. o. s.," a list of vegetables to which ratings thereunder were applicable; that each year, however, new vegetables were grown and offered for shipment for the transportation of which commodity rates were not applicable because not enumerated in the tariff. In order to avoid the revision of the list in the tariff every time a new vegetable was offered for shipment, the enumeration of the vegetables included in the item "vegetables, n. o. s.," was eliminated. This, it is contended, had the effect of making the commodity rate applicable to all vegetables with respect to which there was no specific provision in the tariff. It was also contended that on account of



count of certain changes in rates on potatoes in barrels to eastern points it was found impracticable by the Florida East Coast to publish rates on potatoes in barrels in the fruit and vegetable tariff as had been formerly done, and with the rate in the tariff above cited it was intended to advise shippers that there was a separate tariff containing rates on potatoes in barrels. The note in question, in our opinion, had the effect of canceling all rates named on potatoes in tariff I. C. C. 216. Rates on this commodity could be found in I. C. C. 217, which carried rates on potatoes in barrels only. Turning now to the tariff carrying the item "vegetables, n. o. s.," we find rates on crates of specific dimensions. No rates were presented for shipments of potatoes in hampers. It is conceded that potatoes are vegetables and under a proper tariff provision might be included in the term "vegetables, n. o. s." It follows from this, we think, that the rating provided for vegetables, n. o. s., was not applicable to potatoes shipped in hampers of the dimensions used in this case.

In view of the fact that the rates charged were not applicable under the tariffs of the defendants, it becomes necessary to determine what would have been a reasonable rate. The hampers used in making the shipments in question were smaller than the standard crate or package, and an estimate of 50 pounds per hamper resulted in relatively higher rates than those applicable to shipments made in the standard package. One of the complainants' contentions is that the rates collected were relatively higher than on potatoes shipped in barrels from and to the same points. Taking Miami as a point of origin, the rate charged per hamper was 61½ cents, which is equivalent to \$1.23 per 100 pounds on an estimate of 50 pounds per hamper. The rate on potatoes in barrels from Miami to Chicago was \$1.33 per barrel, equivalent to 71.8 cents per 100 pounds. The defendants contend that the barrel rate is maintained under conditions of intense competition which do not operate with respect to shipments of potatoes in hampers from and to the points in question. It is further stated that no potatoes are shipped in barrels from the points of origin herein involved, and the further contention is made that the hamper used is a fragile package resulting in numerous claims for loss and damage which do not arise when shipments are made in barrels.

We are of the opinion, after considering all the facts of record, that the dissimilarity of circumstances and conditions surrounding the transportation of potatoes in barrels and in hampers fairly warrants some difference in rates. We are of the opinion and find that the rates charged on the shipments involved were unreasonable to the extent that they exceeded charges which would have accrued, based upon actual weight of the shipments transported subject to a carload

minimum weight of 20,000 pounds and at rates per 100 pounds represented by the rate per crate charged raised to a 100-pound basis.

We further find that complainants made the carload shipments herein referred to and paid charges thereon at rates herein found unreasonable, and that they are entitled to reparation thereon, computed on the basis of the finding herein made. The amount of reparation due each complainant can not be determined on this record. Complainants should submit a statement showing the date of movement of each car; the route of its movement; the number of crates contained in each car; the weight upon which charges were paid; the amount paid; and the amount of reparation claimed. This statement, with the freight bills, should be submitted to the defendants for their check respecting dates of movement, number of cars, weights, etc. As soon as the defendants have made their check the complainants should forward the statement to the Commission, together with the paid freight bills, when the matter of issuing an award of reparation will have further consideration.

The subcomplaint brings in issue rates on 16 cars of mixed vegetables, consisting of beans, cucumbers, eggplants, peppers, potatoes, tomatoes, and squash, shipped from Boynton, Fulford, Pompano, and Miami to Chicago, Ill., during February, March, April, and May, 1911. Florida East Coast Railway tariff, I. C. C. No. 205, effective May 30, 1910, and in effect when the shipments in question moved, provided as follows:

Rates published herein on vegetables, n. o. s., apply on the following vegetables when in standard crates, 8 x 14 x 22 inches, estimated to weigh 50 pounds, excess weight and measurement over the estimated weight and authorized measurement will subject packages to a prorata increase of the rate per crate: Beans, beets, carrots, cauliflower, corn, cucumbers, eggplant, lettuce, peppers, potatoes, turnips, and squash. On vegetables (except eggplant and squash) shipped in orange or pineapple boxes apply 200 per cent of the standard crate rate as published herein.

The shipments were packed in 5,000 hampers and 2,738 crates. The hamper used was of the same size as that used in the shipments considered in the original complaint. The crates varied in size. Some of them were larger and some smaller than the standard size and some of them were of the standard size prescribed in the tariff. At the time of movement the rates to Chicago per standard crate were as follows: From Boynton, 59½ cents; from Fulford and Pompano, 60½ cents; and Miami, 61½ cents. The total estimated weight of the shipments was 399,943 pounds, upon which estimated weight freight charges were collected at destination. The shipments were weighed on Illinois Central scales at Chicago and the weight shown there was 287,310 pounds, or a difference of 112,633 pounds. It is about this remarkable difference in weights that the controversy in

this case centers. Much of the evidence relates to the size of the packages in which the shipments were made. Defendants contend that the estimate of 50 pounds per crate prescribed in the tariff was the minimum weight per package. This we find is not the fact. The tariff did not make 50 pounds the minimum weight except for *standard-size crates*. In this view of the case it would appear that the question presented is one of overcharge arising from erroneous weights. The defendants contend that the crates or hampers of smaller size than that prescribed in the tariff were used by shippers for their own purposes and that it would be unjust to award reparation based on actual weight. The fact is that these carriers collected charges for over 100,000 pounds of weight more than they transported. There is no justification for this in the record.

We find that the complainants made the shipments herein referred to and paid charges thereon at weights which we have found to have been excessive. We further find that the charges that were collected were unreasonable to the extent that they exceeded charges based on the actual weight subject to a carload minimum weight of 20,000 pounds, and rates per 100 pounds equivalent to the rates per crate raised to a 100-pound basis in effect at the time the shipments moved. On this record, however, no award of the amount of reparation can be made. The complainants in this case should prepare a statement showing date of each shipment on which reparation is claimed, the character of the shipments and containers; the actual weight of each shipment; the route of movement and the amount of reparation claimed. This statement, together with the freight bills, should be submitted to the defendants for their check and agreement as to dates, weights, routes, etc. When the statement so checked has been received by the Commission, together with the freight bills, the matter of issuing an award of reparation will have further consideration.

It is clear from this record that the "vegetable n. o. s." provision of the Florida East Coast tariff is vague and indefinite. It appears that it is impracticable for shippers in Florida to weigh vegetables at the various points of origin. The estimated weight seems to be a convenience for both the shipper and the carrier. An estimated weight should, however, bear some close relation to the actual weight. Where the estimate is about one-third more than the actual weight it is manifest that there is something radically wrong with the estimated weight. The facts are not before us in sufficient detail to enable us to prescribe for the future the size of the crate that should be used for the standard vegetable shipments or to prescribe a minimum thereon. The Florida East Coast should reform its tariff along lines that will prescribe a standard package, a minimum weight, and a weight per package that will approximate actual weight and

with certainty prescribe charges that will be made on excess weight above that named for the standard package. If this is not done within 90 days, the matter may again be called to our attention, when further proceedings will be had with a view to prescribing a proper tariff provision.

There is one other phase of the case that remains to be considered. The complainants allege that the through rates charged on the potatoes were higher than the combination of intermediate rates. We do not find that under the tariffs in effect at the time that there was any combination of intermediate rates that made lower rates than were charged.

In *Florida Fruit & Vegetable Shippers' Asso. v. A. C. L. R. R. Co.*, 22 I. C. C., 11, we held that the rates on vegetables from producing points on the Florida East Coast Railway to Jacksonville, when for beyond, were unreasonable, and prescribed rates on a lower basis than were applicable at the time the shipments moved. These lower rates were published in Florida East Coast Railway tariff, I. C. C. No. 223, effective December 6, 1912. It may be that these complainants have a claim for reparation based upon the rates found reasonable in the case cited in addition to the amount herein found. The *Florida Fruit & Vegetable Shippers' case* is now in the Supreme Court of the United States, where it is pending on appeal. No award of reparation can properly be made at this time on basis of the rates therein prescribed. Complainants, however, have the right to file claims for reparation on the shipments herein involved on the basis of rates found reasonable by the Commission in the case above cited, and such claims may be disposed of after final disposition of that case.

28 I. C. C.

No. 4345.  
CITY OF MONTEZUMA, GA.,  
v.  
CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

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*Submitted March 16, 1912. Decided October 7, 1913.*

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Upon complaint that freight rates from the Ohio River crossings, the Virginia cities and eastern cities to Montezuma, Ga., are unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul rule; *Held*, That the rates complained of are unjustly discriminatory against Montezuma and dealers thereat, and unduly preferential to Cordele and Americus, Ga., and dealers thereat. No finding is made as to the long-and-short-haul feature of complaint, as that question is before the Commission for the entire southeastern territory in another proceeding and upon a voluminous record.

*Robert B. Blackburn* for complainant.

*Merrel P. Callaway* for Central of Georgia Railway Company; Southern Railway Company; Mobile & Ohio Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Atlanta & West Point Railroad Company; Western Railway of Alabama; Seaboard Air Line Railway; Alabama Great Southern Railroad Company; Nashville, Chattanooga & St. Louis Railway; Atlantic Coast Line Railroad Company; Ocean Steamship Company; and Old Dominion Steamship Company.

*William A. Northcutt* for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

*CLARK, Chairman:*

The city of Montezuma, Ga., complains that the freight rates from the Ohio River crossings, Cincinnati, Louisville, Evansville, Paducah, Cairo, Belmont, etc., from the Virginia cities, Richmond, Norfolk, Portsmouth, Lynchburg, Roanoke, Petersburg, etc., and from the eastern cities, Boston, Providence, New York, Philadelphia, and points taking the same rates, to Montezuma are unjust, unreasonable, and in violation of the long-and-short-haul provision of the act. These rates are alleged to be unjust and unreasonable in that they are higher to Montezuma than to Americus, Cordele, or Dawson, Ga.

Disposition of this case has been deferred because of the long-and-short-haul feature involved, and because that question as affecting the whole southeastern territory was being presented upon a very

voluminous record. There appears to be no reason for further delaying this case but in disposing of it we do not decide any question arising under the fourth section of the act.

Montezuma is located at the crossing of the Central of Georgia Railway and the Atlanta, Birmingham & Atlantic railroads. Americus is 22 miles southeast of Montezuma on the Central of Georgia, and is also on the Seaboard Air Line.

Cordele is 32 miles southeast of Montezuma on the Atlanta, Birmingham & Atlantic, and is also located upon the Seaboard Air Line, the Georgia Southern & Florida, and the Georgia Southwestern & Gulf roads.

Dawson is 49 miles southwest of Montezuma on the Central of Georgia and Seaboard Air Line roads. Americus is directly intermediate between Dawson and Montezuma.

The merchants and dealers at Montezuma come in direct competition with those at Americus and Cordele. It is admitted that such competition does not exist as between Montezuma and Dawson. The class rates, all-rail, from the Ohio River crossings, the Virginia cities, and the eastern cities to the points in question are as follows, in cents per 100 pounds except class F, which is per barrel:

FROM THE OHIO RIVER CROSSINGS

To Americus and Cordele—

Class...	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate....	123	107	96	78	65	52	37	42	33	29	60	60	58

To Montezuma—

Rate....	128	112	100	83	68	55	40	47	36	31	64	64	64
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FROM THE VIRGINIA CITIES

To Americus and Cordele—

Class....	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate....	98	87	78	63	52	41	34	45	37	36	55	57	72

To Montezuma—

Rate....	117	103	93	79	65	54	42	45	35	30	60	73	61.5
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FROM THE EASTERN CITIES TO AMERICUS AND CORDELE

Sea-and-rail via Virginia ports or Savannah—

Class....	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate....	105	93	83	68	56	44	36	48	40	39	58	60	78

Sea-and-rail via Brunswick—

Rate....	100	89	80	66	54	42	34	46	38	37	56	58	74
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All-rail—

Rate....	117	103	92	76	62	49	41	53	45	44	64	68	88
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## FROM THE EASTERN CITIES TO MONTEZUMA

## Sea-and-rail via Virginia ports or Savannah—

Class....	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate....	125	111	98	81	67	54	46	56	43½	41	67	73	173

## Sea-and-rail via Brunswick—

Rate....	120	107	95	79	65	52	44	54	41½	39	65	71	69
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## All-rail—

Rate....	137	121	107	89	73	59	51	61	48½	46	73	81	*83
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The fact that from some territories or points of origin the rates under class F are lower to Montezuma than to Americus and Cordele is not explained.

In general the rates to interior points in this territory are made up of the rates to the nearest so-called basing point plus the local or fixed arbitrary rates from such basing point. Americus and Cordele come within the class of basing points. The rates to Montezuma are made by adding to the rates to Americus or Cordele certain differentials on shipments from the Ohio River crossings or from the eastern cities and the local rates on shipments from the Virginia cities. A basing point is described by defendants' witness as "Where there is considerable freight."

Montezuma is somewhat nearer to the Ohio River crossings and the eastern cities than either Americus, Cordele, or Dawson. It is practically the same distance from New York via the port of Savannah as is Americus. It is 32 miles farther from Savannah than is Cordele. These differences in distance on hauls ranging from 600 to 1,000 miles are negligible.

The Central of Georgia, in hauling freight via Macon, moves it through Montezuma to Americus and Dawson. The Atlanta, Birmingham & Atlantic, in moving freight via Atlanta or Birmingham, hauls it through Montezuma to Cordele. The Seaboard Air Line from Savannah to Montgomery passes through Cordele and Americus and, as has been seen, the rates to these points are the same. This line, with its connections, forms a route via which traffic is moved to Montezuma via Cordele.

Defendants urge that this is distinctively and essentially a long-and-short-haul case. They show that in 1887 the citizens of Americus built the Americus, Preston & Lumpkin Railroad from Americus to a connection with boat lines on the Ocmulgee River, thereby giving Americus substantial rate reductions, which were not met by the Central of Georgia until loss of traffic forced it to reduce its rates to Americus.

<sup>1</sup> Class F, from Boston and Providence

<sup>2</sup> Class F, from Boston and Providence

<sup>3</sup> via Virginia route OK at 95.5.

The Atlanta, Birmingham & Atlantic was constructed to Montezuma in 1908. It adopted the rates that it found in effect at Cordele and at Montezuma. In *Hill & Bro. v. N. C. & St. L. Ry. Co.*, 6 I. C. C., 343, the Commission held that rates on grain and grain products from Nashville, Tenn., should be no higher to Cordele than to Americus. It is stated that the Savannah, Americus & Montgomery, the successor of the Americus, Preston & Lumpkin Railroad, thereupon established to Cordele from all Ohio River crossings and western points the full line of rates that was carried to Americus, although this action was opposed by connecting lines and, for a time at least, the reduction was entirely at the expense of the Savannah, Americus & Montgomery road.

It is argued, therefore, that the Central of Georgia is in no sense responsible for the lower rates at Americus and Cordele; that Cordele is not at all dependent upon the Atlanta, Birmingham & Atlantic road for maintenance of its low scale of rates, and that neither of the lines serving Montezuma can be held responsible for the discrimination against Montezuma and in favor of Cordele and Americus.

None of the carriers reaching Americus, Cordele, or Montezuma reaches any of the Ohio River crossings, Virginia cities, or eastern cities with its own rails. The rates complained of are joint through rates between them and the several carriers whose lines reach the various points of origin involved. Neither of the lines reaching Americus, Cordele, or Montezuma could establish any rate from any Ohio River crossing, Virginia city, or eastern city without the concurrence of other lines. We can not, therefore, hold that the situation complained of is within the control of either of the lines serving Montezuma. It is quite probable that Americus and Cordele would retain the rates they now enjoy if the Central of Georgia and the Atlanta, Birmingham & Atlantic should retire from the business at those points. This is not, however, a case of the longer line meeting the competition of the shorter line, or of traffic from separated competing fields of production seeking a common market. There is, of course, competition of carriers and of markets as between the east and the west, but these defendants jointly engage in the traffic from the east and the west through the several gateways, and accord to Cordele and Americus lower rates than they give to Montezuma, which, as we have seen, is in close proximity to Americus and Cordele, with the difference in distance, though slight, in its favor. The general conditions of transportation can not be dissimilar. The sole dissimilarity in circumstances is that the carriers have refused to reduce the rates to Montezuma as has been done at Cordele and Americus. The rates to Cordele and Americus are admitted by defendants to be compensatory. In the circum-



stances here presented, we do not think that defendants can justly participate in the lower rates to Americus and Cordele without regard to the discrimination against Montezuma.

The situation in many of its general aspects is quite similar to those considered in *Board of Trade of Troy, Ala., v. A. M. Ry. Co.*, 6 I. C. C., 1; *Board of Trade of Dawson, Ga., v. C. of G. Ry. Co.*, 8 I. C. C., 142; *Southern Grocery Co. v. G. N. Ry. Co.*, 12 I. C. C., 229; *Chamber of Commerce, Ashburn, Ga., v. G. S. & F. Ry. Co.*, 23 I. C. C., 140; *Board of Trade of Carrollton, Ga., v. C. of G. Ry. Co.*, 28 I. C. C., 154; *Mayor and City Council, Vienna, Ga., v. G. S. & F. Ry. Co.*, 28 I. C. C., 173; and *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.*, 28 I. C. C., 178.

Upon the whole record we are of the opinion and find that the present adjustment of rates from the Ohio River crossings, the Virginia cities, and the eastern cities, as hereinbefore defined, is unjustly discriminatory against Montezuma and dealers thereat and unduly preferential to Americus and Cordele and dealers thereat, in so far as said rates or any of them to Montezuma exceed the rates on the same classes or commodities from the same points to Americus or Cordele.

A general prayer for reparation is presented, but the adjustment complained of is a part of the general system in the southeastern territory. The conclusions which we have reached will require a new adjustment so far as Montezuma is concerned, and as between Montezuma on the one hand and Americus and Cordele on the other hand, and we do not regard the case as one in which reparation should be awarded.

An order will be entered requiring the defendants to remove the unjust discrimination and undue preference herein found to exist. The pending fourth section proceeding involving this general territory, together with several other cases of the same nature as this one which have been recently decided or are now before us will, no doubt, require readjustments which it is desirable to have made contemporaneously. We shall therefore set the effective date of our order herein as February 1, 1914.

INVESTIGATION AND SUSPENSION DOCKET No. 227.

KANSAS-IOWA BRICK RATES.

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*Submitted October 5, 1913. Decided October 13, 1913.*

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Proposed increased rate on brick from points in the Kansas gas belt to Chicago, Rock Island & Pacific Railway stations in Iowa found not to have been justified.

*W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company.

*A. E. Helm* for Public Utilities Commission of Kansas, Kansas Gas Belt Brick Makers' Association, and others.

*E. J. McVann* for Commercial Clubs of Omaha and Council Bluffs.

REPORT OF THE COMMISSION.

*CLARK, Chairman:*

In this proceeding certain schedules contained in supplements Nos. 8 and 11 to Western Trunk Lines tariff I. C. C. No. A-347, by which it was proposed to increase the rate on brick (except bath, tile, and enameled) in carloads from points in the so-called gas belt in southeastern Kansas to stations on the Chicago, Rock Island & Pacific Railway in Iowa are suspended. The present rate, which was established in 1909, or prior thereto, is 10 cents per 100 pounds and the proposed rate is 12½ cents.

The carriers serving the gas belt are the Missouri Pacific Railway, the Atchison, Topeka & Santa Fe Railway, the Missouri, Kansas & Texas Railway, and the St. Louis & San Francisco Railroad. The Atchison, Topeka & Santa Fe is the only one of these roads that has any line in Iowa, and that only some 20 miles. The territory of destination comprises a somewhat extensive blanket, which, as to traffic from Kansas, may be broadly defined as Mississippi River rate territory, and a small section of Peoria rate territory lying in the extreme northern part of Iowa. This territory is served by a number of carriers, including the Chicago, Rock Island & Pacific Railway, the Chicago, Burlington & Quincy Railroad, the Chicago Great Western Railway, the Chicago, Milwaukee & St. Paul Railway, the Illinois Central Railroad, and the Chicago & North Western Railway. The

last named, however, publishes no rates on this traffic. The rate of the Chicago, Burlington & Quincy to stations on its line is 12½ cents, approved by the Commission in *Standard Vitrified Brick Co. v. C., B. & Q. R. R.*, 25 I. C. C., 669. The other lines have in effect a rate of 10 cents. On the Rock Island the 10-cent rate applies to practically all points in Iowa south of Oelwein, on the Decorah division; Clarksville, on the St. Paul line; and Clarion, on the Iowa Falls division, including the upper Mississippi River cities and junctions with the Chicago Great Western, the Chicago, Milwaukee & St. Paul, and the Illinois Central. The effect of the proposed increase would be lower rates to competitive points via other lines than via the Rock Island. In explanation of this the Rock Island insists that it prefers to retire from the traffic to competitive points rather than to sacrifice much-needed additional revenue on traffic to its intermediate local stations. From gas-belt points to Kansas City the average rate is 5 cents and the local rate from Kansas City to most of the Iowa destinations on the Rock Island is 7½ cents. The new rate, therefore, is in effect the full Kansas City or Missouri River combination, and will, if permitted to stand, follow out the general scheme of rate construction in this territory. Protestants urge that such an adjustment should not be approved, and allege that a continuous haul can not ordinarily be as expensive as combined local hauls with their additional terminal services.

The present adjustment appears to result from the facts that the gas-belt rate to St. Louis is 10 cents, the rates to the upper Mississippi River crossings are the same as to St. Louis, and these rates are not exceeded to intermediate points. The principal respondent avers that no changes are contemplated by other lines and that it stands alone in the proposal to depart from the established basis, doing so because the present rate is regarded as too low and as yielding unsatisfactory earnings for the Rock Island.

The original plan of the respondents was to establish the 12½-cent rate to practically all points on the Rock Island in Iowa, except to stations to which the combination on Omaha or Council Bluffs makes less, and to certain stations in the vicinity of Council Bluffs to which the Commission in *Sunderland Brothers v. M. P. Ry. Co.*, 22 I. C. C., 141, adjudged the reasonable maximum rate to be 10 cents. As filed, however, the schedules also except main-line stations east of the group involved in the *Sunderland Brothers case*, as far as Des Moines and all points from the Iowa state line through Eldon and Des Moines to Hampton, on the St. Paul & Kansas City Short Line. With a rate to Peoria of 12 cents, the new schedule proposes to establish 12½ cents to intermediate points, creating violations of section 4 of the act, to correct which it was stated on the hearing that the rate to Peoria would also be increased. No rate to Peoria, however, is named in the suspended schedules.

Witness for the Rock Island, the only one appearing for respondents, offered in evidence certain tables of distances and per-ton-mile earnings from Iola and Coffeyville, Kans., as representative shipping points, to a selected number of destinations, also said to be representative. These show the distances via Omaha and via Kansas City over both the Rock Island route and the short lines and the resulting revenue under the old as well as the new rate.

Witness appears to have figured the distances via the Rock Island route on Eldon, Iowa, and while this is stated to be the present route for through business, it appears that the St. Paul & Kansas City Short Line has been constructed and put in operation for local traffic extending from Allerton to Carlisle, Iowa, which shortens the distance from Kansas territory to Des Moines and points north and west thereof by approximately 95 miles. This line, although separately operated, is by stock ownership a Rock Island property and can not be ignored since it affords opportunity for shorter hauls and reduced operating expenses with correspondingly increased revenue per ton-mile. Protestants direct attention to this fact and at the same time question the accuracy of the distances and per-ton-mile figures included in respondents' tables. We have not attempted to check all of the figures, but those which we have checked disclose such material errors, aside from the differences in distance via Eldon, as compared with the St. Paul & Kansas City Short Line route, as to impair the evidentiary value of the tables upon which the defense is built.

While they are a factor in rate making, per ton-mile results are not necessarily controlling, and, unaccompanied by testimony with respect to other elementary factors, neither respondent's figures nor the correct figures constitute a sufficient or conclusive guide to the reasonableness of the proposed rate. It is true that comparison is made in the briefs with per ton-mile earnings yielded by rates on brick traffic in this general section which have been approved in cases heretofore decided by the Commission, but this does not justify the increases proposed in the instant case. The Rock Island avers that the cost of operation of its entire line, including the territory between the Missouri River and stations in Iowa, has increased, but no details are given as to the system as a whole or as to the particular lines here involved.

The law casts upon the carriers the obligation to justify proposed increased rates, and in this case that obligation is not satisfactorily discharged by the presentation of statements of earnings per ton-mile and suggestions of increased general operating expenses. If the rate heretofore maintained yields less than a fair return for the services rendered, that fact is not established of record. Respondents have failed to sustain the burden cast upon them by the law. We

are of the opinion, and find, that the existing rate on brick (except bath, tile, and enameled) from points in southeastern Kansas, generally known as the gas belt, to stations in Iowa on the Chicago, Rock Island & Pacific Railway embraced in the suspended schedules is, and for the future will be, the reasonable maximum rate. Respondents will be required to continue the present rate as a maximum for a period of not less than two years.

Such an order will be entered.

28 I. C. C.

No. 4956.

VOLCO MANUFACTURING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted January 2, 1913. Decided October 13, 1913.*

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The complainant's petition for the establishment of low commodity rates on east-bound shipments of its product not granted. The reduction of the present rates to a level suggested by the findings in the *Kansas Rate case* allowed.

*Martin E. Casto* for complainant.

*T. J. Norton* and *A. A. Hurd* for Atchison, Topeka & Santa Fe Railway Company.

*W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*Fred G. Wright* and *Henry G. Herbel* for Missouri Pacific Railway Company.

*Fred H. Wood* for St. Louis & San Francisco Railroad Company.

*R. C. Fyfe* for Western Classification Committee.

REPORT OF THE COMMISSION.

**MEYER, Commissioner:**

The Volco Manufacturing Company, a Kansas corporation with a factory located at Wichita, Kans., is engaged in the manufacture, sale, and distribution of a cleansing compound. By a petition, filed July 1, 1912, it complains against the application of fifth class rates to the transportation of its product in carloads from the factory to such points as Kansas City, St. Joseph, and St. Louis, Mo., and Peoria and Chicago, Ill., as unjust and unreasonable, discriminatory, and unduly prejudicial, and asks for the establishment of just and reasonable rates for such transportation.

The complainant's product is composed chiefly of a so-called volcanic ash, a considerable deposit of which, located at Anthony, Kans., about 57 miles southwest of Wichita, is owned by the complainant. At the time of the hearing the factory had been established for about a year and had developed a considerable trade locally in Wichita and throughout the southern half of Kansas. The com-

plainant is desirous of developing trade in its product in Kansas City, St. Joseph, and St. Louis, Mo., Peoria and Chicago, Ill., as well as in the large jobbing centers to the east, by the establishment of distributing agencies from which less-than-carload shipments may be made to consuming points, and contends that under the rates established to the points named in the petition it is unable to meet the competition of manufacturers of other products of the same general nature and purpose located in Kansas City, Omaha, St. Louis, Chicago, etc.

The western classification puts cleansing compounds in carloads into the fifth class, and the rates complained of—36 cents per 100 pounds from Wichita to Kansas City and St. Joseph, Mo., 55 cents to St. Louis, Mo., and points taking the same rates, 57½ cents to Peoria, Ill., and points taking the same rates, and 60 cents to Chicago, Ill., and points taking the same rates—are all class rates governed by the western classification. No complaint is made against the less-than-carload rates, and an attack upon the classification of the complainant's product in carloads as fifth class is expressly disclaimed by the complainant, although the application of a low commodity rate is sought. It was shown at the hearing that while soap, washing powders, and scouring compounds in carloads generally take fifth-class rates, there are several cases in western classification territory in which commodity rates apply. It does not appear likely, however, that a great amount of traffic moves under commodity rates.

Rates on canned goods and certain other grocery commodities from St. Louis to Wichita were shown to be 44 cents per 100 pounds in carloads, and it is contended in behalf of the complainant that substantially the same rate should be made applicable to shipments of the complainant's product from Wichita to St. Louis. (This rate is just double the fifth-class rate between Kansas City and St. Louis and was claimed by the defendants to be the result of the establishment of a 25-cent commodity rate from the Missouri River to Wichita by the Kansas state commission.) It was likewise shown that the first-class rates from Wichita to St. Louis are substantially double the first-class rates between Kansas City and St. Louis.

On the part of the defendants it was contended that the manufacturers of competing products ship into Wichita at the same rates as the complainant is required to pay on its outgoing shipments. It was also contended that the importance of the freight rate as a factor in the cost of marketing such a product as *volco* was small in comparison with the advertising campaigns prosecuted by the complainant's competitors, though it was not claimed that the lack of advertising on the part of the complainant should be advanced as an excuse for withholding a reasonable rate adjustment.

The principal complaint would appear to be against the rate of 36 cents from Wichita to Kansas City and other Missouri River points and its effect on the rates to the other points named in the complaint. The rate just named produces an average of 33.8 mills per ton per mile, for the short-line distance from Wichita to Kansas City, 213 miles, as against 22.2 mills per ton per mile for the short-line distance from Kansas City to the Mississippi River, 198½ miles, and 15.8 mills per ton per mile for the short-line distance from Kansas City to St. Louis, 277 miles.

No extended reference was made to operating conditions, etc., it being noted that the whole matter was before the Commission in the so-called *Kansas Rate case*, 27 I. C. C., 673, which involved all westbound rates from the Mississippi River and Chicago to points in Kansas. The complaint as here presented looks to the establishment of low commodity rates on eastbound shipments of the complainant's product. It does not appear, however, that sufficient reason has been advanced for their establishment on as low a basis as that proposed by the complainant.

As is noted above, the rates in controversy in the present case are class rates and until the effective date of the order in the *Kansas case*, *supra*, were the same as the westbound rates on the same class. Under the circumstances, it does not seem inappropriate to make the fifth-class rate, St. Louis to Wichita, adopted in our conclusions relative to the *Kansas case*, applicable to the movement of the complainant's product in carloads in the reverse direction. We therefore find that the rate on shipments of volco in carloads from Wichita, Kans., to St. Louis and other points taking the same rates, is unjust and unreasonable to the extent that it exceeds a rate of 51 cents per 100 pounds. We do not find, however, that the rate of 36 cents per 100 pounds from Wichita, Kans., to Kansas City, Mo., is unreasonable. The established differentials over the St. Louis rate to Peoria and to Chicago and other points taking the same rates should be maintained.

An order will be issued accordingly.

28 I. C. C.



INVESTIGATION AND SUSPENSION DOCKET No. 268.  
BRICK RATES FROM OHIO POINTS TO HUNTINGTON,  
W. VA.

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*Submitted July 7, 1913. Decided October 13, 1913.*

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Increased rates on brick in carload lots from the Hocking, Shawnee, and Zanesville groups in southern Ohio to Huntington, W. Va., not justified.

*Edward Barton* for Baltimore & Ohio Southwestern Railroad Company.

*William King* for Toledo & Ohio Central Railroad and Zanesville & Western Railroad Companies.

*H. F. Youse* for Kanawha & Michigan Railroad Company and Hocking Valley Railway Company.

*J. T. Crutchfield* for Jobbers & Manufacturers Bureau, Huntington Chamber of Commerce.

*W. N. Alderman* for Athens Brick Company.

REPORT OF THE COMMISSION.

*CLARK, Chairman:*

On protest of brick manufacturers located at Athens, Nelsonville, Logan, Glouster, and Trimble, Ohio, we suspended until March 29, 1914, proposed increased rates on brick in carloads from the Hocking, Shawnee, and Zanesville groups in southern Ohio, to Huntington, W. Va.

All of the points from which protests were received are located in what is known for rate-making purposes as the Hocking group, which, roughly speaking, extends from New Straitsville south to Hamden and from Athens north to Glouster, Ohio.

The Baltimore & Ohio Southwestern, Kanawha & Michigan, and Hocking Valley railroads serve points in the Hocking group. The Shawnee and Zanesville groups, which take their names from those towns, are located north of the Hocking group.

The following statement shows the short-line distances and the present and proposed rates from certain representative points to Huntington. For the reason that the present rates to Huntington are said to affect the combination of rates on Cincinnati to southeastern territory, the short-line distances and rates from the same points to Cincinnati are also shown. Rates are hereinafter stated per net ton.

From—	To Huntington, W. Va.			To Cincinnati, Ohio.	
	Short-line mileage.	Old rate.	New rate.	Short-line mileage.	Rate.
Portsmouth, Ohio.....	47	\$0.70	\$0.70	107	\$1.05
Points in Hocking group:					
Nelsonville, Ohio.....	103	.90	1.15	156	1.15
Logan, Ohio.....	116	.90	1.15	144	1.15
Athens, Ohio.....	89	.80	1.15	158	1.15
Glouster, Ohio.....	104	.80	1.15	173	1.15
Middleport, Ohio.....	53	1.05	.70	194	1.25
Shawnee, Ohio.....	122	.90	1.15	151	1.15
Zanesville, Ohio.....	138	.90	1.15	168	1.15
Columbus, Ohio.....	147	1.10	1.20	116	1.05
Marietta, Ohio.....	135	.90	1.15	205	1.25

Portsmouth, Middleport, and Marietta are located on the north bank of the Ohio River. It will be noted that as proposed the rate from Portsmouth is not changed, that from Middleport it is reduced from \$1.05 to 70 cents, and that from Marietta it is increased from 90 cents to \$1.15.

The Baltimore & Ohio Southwestern Railroad Company, which will be hereinafter referred to as the B. & O., bore the burden of defending the increased rates, and the Kanawha & Michigan, Toledo & Ohio Central, and Zanesville & Western Railroad Companies adopted as their own the testimony submitted on part of the B. & O.

That carrier contends that the increased rates were made necessary in order to preserve group adjustments, obtain proper remuneration for the services rendered, and to prevent reductions in other rates, with consequent loss of revenue.

As Canton was the original brick-producing point in Ohio, rates from other districts, established thereafter in central freight association territory, were, in order to enable such districts to compete with Canton, generally predicated upon the Canton rates. For several years prior to October 26, 1906, the rate on paving brick from Athens and Zanesville to Huntington was \$1.25 and that from Canton \$1.35. The rates on building and face brick were 25 cents higher. On the above date the rate on paving brick from Athens was, apparently in order to develop traffic, reduced to 80 cents. The rate on building and face brick was reduced to that level March 1, 1911, in accord with the decision of the Commission in *Stowe-Fuller Co. v. P. Co.*, 12 I. C. C., 215. Respondents contend that normally, under the group adjustment, the Zanesville rate should be 20 cents under the Canton rate, and as the rate from Canton to Huntington is still \$1.35, Zanesville and points now grouped therewith should be \$1.15. The fact that Athens has had an 80-cent rate for seven years, and the fact that a rate but 10 cents under Canton was applicable for four years previous thereto, shows a long continued divergence from the so-called normal basis.

It is asserted that the lower combination of rates on Huntington was menacing the rates from the Shawnee and Zanesville districts to points in southeastern territory, such as Savannah and Brunswick, Ga., and Charleston, S. C. For instance, the present rate from the Zanesville and Shawnee districts to Huntington is 90 cents and to Cincinnati it is \$1.15, while the rate from both Huntington and Cincinnati to Charleston, S. C., is \$3 making the Huntington combination 25 cents lower than the Cincinnati combination. Respondents say that inasmuch as the distances from the Shawnee and Zanesville groups are approximately the same to both Huntington and Cincinnati the rates from those groups should be the same to both points. It is seen, however, that the short-line distance from Shawnee to Huntington is 122 miles as against the short-line distance of 151 miles to Cincinnati, and that the short-line distance from Zanesville to Huntington is 138 miles as against 168 miles to Cincinnati.

A brick manufacturer located in the Canton district called respondents' attention to the rate situation and stated that unless the rates from Athens, Shawnee, Zanesville, and points taking the same rates to Huntington were increased the rates from Canton to Huntington should be reduced to accord with the present rates from the lower districts. Certain carriers, particularly the Hocking Valley Railroad, named proportional rates applicable only on shipments destined to southeastern territory from points in the Hocking group to Cincinnati. The proportional rate from Logan and Nelsonville to Cincinnati of 90 cents was withdrawn December 1, 1912, on promises of the roads serving the Hocking, Shawnee, and Zanesville groups that the rates therefrom to Huntington would be increased to the so-called normal basis. It was the expectation of the carriers that they would be able to make this adjustment earlier, but owing to various conditions the increases were not undertaken until June 1, 1913. At that time the Athens Brick Company had remaining unshipped 400,000 brick, and it was primarily to enable it to fulfill a contract on the basis of the 80-cent rate that the suspensions were sought. Owing to the delay on the part of the carriers serving the Hocking, Shawnee, and Zanesville groups in increasing the rates to Huntington, the Hocking Valley threatened to restore the 90-cent proportional rate to Cincinnati.

In the group adjustment the rates on brick east, north, and west from the Hocking, Shawnee, and Zanesville districts to points in central freight association territory are the same. Respondents assert that although Athens is within a comparatively short distance of Huntington, the disadvantage under which it will labor if the in-

creased rates are permitted to become effective is compensated for by the fact that on longer distances north, east, and west its rates are the same as those from Shawnee and Zanesville.

The effect of the proposed increases is to amalgamate the Hocking, Shawnee, and Zanesville districts and to make the rates therefrom the same in all directions. They would remove the lower combination on Huntington, prevent threatened reductions in rates from Canton to Huntington and also from groups north thereof. The carriers feel that to place all of the points in the Hocking, Shawnee, and Zanesville groups on the same basis to Huntington as to Cincinnati will be a justifiable realignment. The statement previously given shows, however, that the distances from Athens, Logan, Nelsonville, and Glouster to Huntington are considerably shorter than from the same points to Cincinnati. For instance, the short-line distance from Athens to Huntington is 89 miles and to Cincinnati it is 158 miles; from Glouster to Huntington it is 104 miles, as against 173 miles to Cincinnati.

Some stress was laid upon the revenue per ton-mile. Of course, this is one of the factors that is helpful in determining the reasonableness of rates, but its value is considerably minimized in a group adjustment. On the short-line distance from Athens to Huntington the revenue per ton-mile is 9 mills. The average distance to Huntington from the five points from which protests were received is 103 miles which, on the 80-cent rate, equals 7.7 mills per ton-mile. The B. & O. moves traffic from Athens to Huntington via Parkersburg, W. Va., a distance of 158 miles. On the 80-cent rate this yields 5 mills, and on the \$1.15 rate 7.2 mills per ton-mile. From Trinway and Cleveland to Huntington, Charleston, W. Va., Cincinnati, Toledo, and Louisville, and from Toledo to Huntington, Charleston, Cincinnati, and Louisville, the earnings per ton-mile range from 4.4 to 7.4 mills. The distance from Athens to Charleston, W. Va., is 106 miles, the rate 75 cents, and the per ton-mile 7 mills, while the distance from Athens to Toledo is 200 miles, the rate \$1, and the per ton-mile 5 mills. The average receipts per ton-mile on all freight for the year ended June 30, 1912, for the five roads principally interested in this proceeding are in mills as follows: B. & O., 5.80; Hocking Valley, 4.33; Kanawha & Michigan, 4.04; Toledo & Ohio Central, 4.84; and Zanesville & Western, 11.45. Remembering that these figures cover all freight, including brick, the earnings per ton-mile from the points in controversy to Huntington for such a low-grade commodity as brick, are not very low.

The statement following shows the distances and rates from Athens, Zanesville, and Canton to certain representative points.

To—	Distance from—		Rate.	From Canton.	
	Athens.	Zanesville.		Distance.	Rate.
Chicago, Ill.....	391	371	\$1.65	367	\$1.65
Toledo, Ohio.....	200	173	1.06	160	1.06
Peoria, Ill.....	446	427	2.00	514	2.00
Youngstown, Ohio.....	262	139	1.30	55	.79
Buffalo, N. Y.....	383	327	1.80	242	1.80
Louisville, Ky.....	272	269	1.55	364	1.55

<sup>1</sup> Athens to Youngstown, \$1.35 per net ton.

From January 1, 1912, to June 30, 1913, the B. & O. moved 217 carloads of paving brick from Athens to Huntington. For the two years prior to July, 1913, the Kanawha & Michigan transported 75 carloads of brick from Athens to Huntington, but none from Glouster or Trimble, although those points are served by that road. Athens, being located on the B. & O., the Kanawha & Michigan is compelled to pay out of the 80-cent rate applicable from Athens to Huntington a switching charge of 10 cents. The movement via the lines of the other respondents is not shown.

The rates to certain points such as Guyandotte, W. Va., and Catlettsburg, Ky., were not increased at the time the rates to Huntington were increased, but it is the intention of the carriers to place all these points on the same basis.

The testimony as to the reasonableness *per se* of the increased rates is meager, consisting mainly, so far as respondents are concerned, of a statement to the effect that they are practically on the same basis as other brick rates in the same territory.

Respondents appreciate that it is difficult to justify an increase in these rates of 35 cents per net ton, 44 per cent, \$1.75 per 1,000 brick, or \$23.10 per carload of 66,000 pounds, but rest their defense on the grounds which have been stated.

The Athens Brick Company, the manufacturers at Trimble, Glouster, and Nelsonville, and the Jobbers & Manufacturers Bureau of the Huntington Chamber of Commerce appeared in opposition to the increased rates.

Five building-brick plants, with a daily capacity of 300,000 brick, and six paving-block plants, having the same average daily capacity, are located in the Hocking group. A major portion of the shipments to Huntington was paving brick, and about 10 per cent of the output of the Athens plant went to Huntington.

In the past few years Huntington has paved 65 miles of its streets and within the next two years expects to use 2,000,000 brick for paving. Inasmuch as the rate of 70 cents from Portsmouth to Huntington has not been changed, it is urged that an increase in the rate from Athens to Huntington and a decrease from \$1.05 to 70 cents in the

rate from Middleport to Huntington will render Huntington unable to secure brick from Athens.

From the standpoint of loading, lading, value, risk, volume, and other considerations which tend to determine the reasonableness of rates, the Commission has held that brick is a desirable traffic and should be accorded a low rate as compared with most other traffic.

The burden of proof of sustaining the propriety of the increased rates is upon respondents. The 80-cent rate from Athens to Huntington has been in effect for seven years, and it was voluntarily reduced from \$1.25. The reductions in rates from the other groups were in consequence thereof. The revenue per ton-mile for the short-line distances is not low. We have practically no testimony as to the reasonableness *per se* of the proposed rates. The fact that other rates may be reduced if the increases are not permitted to become effective affords no predicate that the present rates are unreasonably low. If a shipper from Athens must absorb the increase in rates to Huntington over Portsmouth, certainly Canton with a rate 20 cents higher than the proposed rate from the Hocking, Shawnee, and Zanesville groups can not expect to compete as against Portsmouth. The attempt, therefore, of a brick manufacturer at Canton to coerce carriers serving that district to increase the rates from other districts is not a justifying reason for increasing the rates from such districts. Under the present rates from Athens the receipts per ton-mile on brick exceed the average receipts per ton-mile on all traffic. The reasonableness of the rates to southeastern territory is not presented, and therefore can not be considered as justifying these increases. The distances from the points in controversy to Cincinnati are greater than those from the same points to Huntington. Brick is a desirable traffic, and should, for reasons that have often been stated, take a low rate. The group adjustment, which is the principal reason assigned for the increases in rates, has been departed from for many years and has consequently lost potency as a defense. The question of the reasonableness of a 70-cent rate from Portsmouth to Huntington is not in issue in this proceeding. Complete justification for an increase so marked as that from 80 or 90 cents to \$1.15 must be presented before such increase can be approved.

From all the facts and circumstances disclosed of record, we are of the opinion that the carriers have failed to justify the proposed increased rates, and they must be withdrawn. If this is not done before December 1, 1913, an appropriate order will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 222.  
OKLAHOMA-COLORADO POTATO RATES.

*Submitted September 2, 1913. Decided October 13, 1913.*

1. Proposed increased rates on potatoes from points in Oklahoma to points in Colorado held to have been justified. Order of suspension vacated.
2. If, when viewed in the light of those considerations which enter into proper rate-making, a particular rate is fair and just for the service performed, the price at which the shipper markets his product can not be accepted as the controlling factor in fixing the rate.

*C. B. Bee* for Corporation Commission of Oklahoma.

*A. A. Hurd, T. J. Norton and B. F. E. Marsh* for Atchison, Topeka & Santa Fe Railway Company.

*F. C. Dumbleck and Fred H. Wood* for St. Louis & San Francisco Railway Company.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

This case involves the reasonableness of a proposed increase, by the carriers respondent, in the rate on potatoes from points in Oklahoma, principally Shawnee and Oklahoma City, to points in Colorado. The tariffs under suspension are supplement No. 1 to Atchison, Topeka & Santa Fe's I. C. C. No. 6262, and supplement No. 7 to St. Louis & San Francisco's I. C. C. No. 6054, canceling existing rates from all stations in Oklahoma to Colorado Springs, Denver, Pueblo, and Trinidad, Colo. The present rates are from 40 to 52 cents, while the rates sought to be put into effect and now suspended range from 40.5 to 54 cents. The evidence relates more particularly to the increase from 40 to 45 cents, Shawnee, Okla., to Denver, Colo., to which the objection is chiefly directed.

For the protestants it is contended that the present rate is ample for the service rendered, that any increase would be unreasonable and would result in depriving the potato growers of Oklahoma of the market for their early crops to be found at Denver and other distributing points in Colorado, due to the small margin of profit in such commodities. The respondents insist that the proposed tariff will result in advantage to the shippers, inasmuch as the present rates apply only as far north as Denver while those proposed reach Cheyenne, Wyo., as the farthestmost northern point; and also, an advantage in that the present rate is for potatoes only, while that proposed covers

other vegetables as well. Respondents further contend that the proposed rates are reasonable for the service performed, especially in view of rates to other points on like commodities approved by the Commission.

It appears that in order to meet a complaint made by the Commercial Club of Greeley, Colo., of discrimination in favor of westbound traffic, the railroads affected, after a conference with the potato raisers of Colorado, agreed to increase their tariff on potatoes westbound, so that it would equalize the eastbound rate, which had theretofore been about 5 cents higher; and accordingly filed tariffs which became effective as to all lines except the respondents, the Atchison, Topeka & Santa Fe and the St. Louis & San Francisco, these two companies having through error failed to cancel the 40-cent maximum. Subsequently these two lines filed a new tariff canceling the 40-cent maximum and increasing the rate to 45 cents, as had the other lines, and this increase was protested by the Corporation Commission of Oklahoma, whereupon an order of investigation and suspension was issued.

One of the reasons advanced by respondents to support the reasonableness of the proposed tariff is that the eastbound rate is and has been for some time the same amount as that now proposed for westbound traffic. But such a contention necessarily presupposes the fairness of the eastbound rate, a presumption not to be accepted as correct without inquiry, especially in view of the fact that the 40-cent rate from Oklahoma westward had been in force for many years without effort on the part of the carriers to increase it, the suggestion of increase occurring to the railroads, so far as the evidence shows, only after the Commercial Club of Greeley, Colo., had complained that the Colorado rate eastward was too high. Instead of lowering the eastbound rate, the companies endeavored to meet the situation by raising the rate westbound. Standing alone and in view of the existing conditions, this contention rather supports the unfairness of the proposed increase than its reasonableness. But, say respondents, the eastbound rate, in consideration of the service rendered, and when compared with other rates for like services, is reasonable and has been recognized as such by the potato growers of Colorado. It is further contended that if there be any unfairness or discrimination by placing the eastbound and westbound rates on a parity, the advantage is in favor of the protestants, the Oklahoma crop being always shipped early in the year and consisting of new potatoes, which are of a perishable nature, and therefore necessitate expedited and special service, and at that period of the year the minimum weight is 24,000 pounds, while in the fall of the year when the Colorado potatoes are transported the minimum is 30,000 pounds,



and the potatoes themselves are of a more firm and less perishable nature.

A comparison with rates to other points and the revenue per ton per mile realized will be of interest:

Route.	Distance.	Rate.	Per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>
Shawnee to Denver (present).....	753	40	10.35
Shawnee to Denver (proposed).....	753	45	11.35
Fort Worth to Denver.....	801	54	13.35
Denver to eastern Kansas points.....	600	35	11.35
St. Paul, Minn., to Shawnee.....	942	51	10.35
St. Louis to Shawnee.....	630	45	14.35
St. Louis to Texas common points.....	800	58	14.35

The evidence also shows that the 40-cent rate from Shawnee to Denver was due to the fact that 40 cents was formerly carried from Gainesville, Tex., and thus became the maximum at Shawnee and points in Oklahoma intermediate; that the Gainesville rate has now been advanced to a figure higher than 45 cents, so that the 40-cent maximum feature no longer obtains.

We have given due consideration to the evidence and argument of protestants with respect to the alleged decreased margin of profit at the market end of the line which may result from the increased rate. Suffice it to say that commercial and transportation conditions must not be confused, and that the condition of the market as to any specific commodity is not to be considered the controlling element by this Commission in determining the reasonableness of a rate. If, when viewed in the light of those considerations which enter into proper rate making, a particular rate is fair and just for the service performed, the price at which the shipper markets his product can not be accepted as the controlling factor in fixing the rate.

The protestants also show that the rate on potatoes from Shawnee to St. Louis is but 25 cents as against 45 cents from St. Louis to Shawnee, and argue that it would have been more fair to consider that rate in determining the reasonableness of the suspended tariff than the comparison with the 45-cent rate from St. Louis westward. It appears, however, that this 25-cent rate is compelled by competitive conditions, the movements of early vegetables from Oklahoma eastward occurring at about the same time that like products are put upon the market from Tennessee, Kentucky, and Illinois, and that, accordingly, if such articles are transported at all, they must be handled at a low rate.

We are of opinion that the respondents have met the burden cast upon them and have shown that the proposed rates are reasonable. An order will accordingly be entered removing the suspension and permitting the new tariffs to take effect.

No. 4652.

LEBANON COMMERCIAL CLUB

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

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*Submitted October 1, 1912. Decided October 14, 1913.*

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Local rates for the transportation of bituminous coal in carloads from mines located on the Louisville & Nashville Railroad in Virginia and Tennessee to Louisville, Ky., are less than to Lebanon, Ky., an intermediate local point 67 miles nearer to the mines than is Louisville, and vary according to the grade of the coal, while the rates to Lebanon are not so varied; *Held*, That as the rates to Louisville are influenced largely by the movement of bituminous coal by the Ohio River and by competing rail carriers, the lower and varied rates to that point have not been shown to be unjustly discriminatory as against Lebanon.

*John McChord* for complainant.

*William A. Northcutt* for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

MARBLE, *Commissioner*:

The petitioner, an organization of those interested in furthering the common interests of Lebanon, Ky., and of its vicinity, attacks the rates on bituminous coal to Lebanon from Big Stone Gap, Stonega, and Norton, Va., and from Cotula, Jellico, and Habersham, Tenn., as unjust and unreasonable *per se*. As a second ground of complaint it says that rates from these points to Louisville, Ky., vary according to the grade of coal shipped, whether: (a) Slack, or nut and slack mixed, (b) run of mine, (c) all other grades of coal; whereas to Lebanon the one rate governs the carriage of coal of all grades, to the consequent unreasonable disadvantage and prejudice of that city. The third ground of complaint is that the rates from points of origin in the states of Virginia and Tennessee to Lebanon are greater, in the aggregate, than the rates for the transportation of like grades of coal from the same sources, over the same lines of railroad and in the same direction to Louisville (67 miles beyond Lebanon), the haul to Lebanon being included within the haul to Louisville, all in violation of the third and fourth sections of the act.

Defendant Louisville & Nashville Railroad Company (hereinafter called the Louisville & Nashville) answers with a general denial,

and more specifically relies upon the dissimilarity of circumstance and conditions governing the rates to these two points as the justification for the differences in rates. Defendant Interstate Railroad Company denies all responsibility for the rates complained of.

That portion of Fourth Section Application No. 1952, wherein the Louisville & Nashville asks authority to continue lower rates on coal from Stonega, Big Stone Gap, and Norton, Va., Jellico, Cotula, and Habersham, Tenn., to Louisville, than the rates concurrently in effect on like traffic from the same points of origin to Lebanon, Ky., an intermediate point, was heard in connection with this complaint.

Lebanon is a local point on the Louisville & Nashville with a population of something over 3,000 inhabitants. The record indicates that it has a number of manufacturing establishments. Stonega is located upon the line of the Interstate Railroad Company, by which road the coal from Stonega is delivered to the Louisville & Nashville at Appalachia, Va., at a rate of 10 cents per ton. All the other points of origin named are local to the Louisville & Nashville. The table following shows comparatively the rates here in question, in cents per net ton of 2,000 pounds, on bituminous coal:

From—	To Lebanon, Ky., on all grades.	To Louisville, Ky.		
		Slack or nut and slack mixed.	Run of mine.	Other grades.
Stonega, Va.....	140	95	105	115
Big Stone Gap, Va.....	130	85	95	105
Norton, Va.....	130	85	95	105
Jellico, Tenn.....	120	75	85	95
Cotula, Tenn.....	125	75	85	95
Habersham, Tenn.....	125	75	85	95

Complainant's proof on the issue of unreasonableness was largely in the form of tables, showing (1) rates from these same points of origin to destinations in Ohio and Indiana; (2) local rates of the Illinois Central Railroad from Dawson, Ky., to destinations in Kentucky; and (3) a statement of rates from mines on the Southern Railway to stations on that railroad in Illinois and Kentucky. The rates shown in exhibits 1 and 3 cover transportation which is affected by many conditions not present in the territory here considered. The rates from Dawson are influenced largely by rates from a mine 53 miles nearer to the destinations shown than are the Dawson mines. The Louisville & Nashville showed that its rates to Lebanon are made upon what it terms "a sort of combined distance and blanket basis," which governs the making of all bituminous-coal rates to its local stations in Kentucky. Under this scheme all mines in a certain territory are grouped together and accorded a group rate

which increases regularly with the distances and is shaded to meet competitive conditions, where such are met. Defendant further showed, taking rates from Jellico as illustrative, that Lebanon has precisely the same rates as similarly located points in Kentucky, and that no such point has a rate lower than that to Lebanon. Another showing by defendant indicates that these rates furnish no higher returns than do other rates in this territory by way of other railways.

Complainant made no attempt to rebut this attack upon its exhibits. Neither does it in its brief make any effort to defend them. It disposes of the issue with the statement that it appears logical that the complaint should be considered as a whole. Under these circumstances, the Commission is forced to agree with the contention made by the Louisville & Nashville in its brief that complainant bases its entire case upon the issue of comparative unreasonableness.

The complainant admits that Louisville's position on the Ohio River, and as a railroad center, operates to give it rates which Lebanon may not reasonably claim. But it is insisted that these advantages do not warrant the existing differences between Louisville and Lebanon rates, and that the same should not exceed 15 cents per ton. This particular figure, however, is merely the conclusion of complainant's rate expert. The Commission finds the record quite bare of anything that will enable it to determine the extent to which the Lebanon rate should be allowed to exceed the Louisville rate. It must also be remembered that any change which may be made in the existing differential will necessarily reflect into the rates to other Louisville & Nashville points, intermediate, as is Lebanon, to Louisville. Under all these circumstances, it is the view of the Commission that final action on the fourth section element of this petition should await the disposition of the Louisville & Nashville Railroad Company's Fourth Section Application No. 1952, and also the construction of the fourth section to be made by the Supreme Court in cases now under submission.

The only question remaining is whether or not there is discrimination against Lebanon, because its rates are not varied according to the grade of the coal, as are the rates to Louisville. Complainant contends that a number of years ago Lebanon enjoyed such rates through the medium of a tariff provision which granted a 30 per cent refund from the published rate when the coal was used for steam purposes. The defendants say that when this refund was made the gross rate from Jellico to Lebanon was \$1.65 per ton. This amount was actually collected and retained on domestic coal. The refund left the net rate on steam coal \$1.15½ per ton. This refund was discontinued July 20, 1901, and the Louisville & Nashville then established the present rate of \$1.20 per ton on all bituminous coal from Jellico to

Lebanon. It will be observed that this effected a reduction of 45 cents per ton on domestic coal and an advance of  $4\frac{1}{2}$  cents per ton on steam coal.

The Louisville market appears to be controlled by the movement of coal by river at a very low transportation cost, and by the movement of coal from western Kentucky mines at a rate of 60 cents per ton by the Illinois Central Railroad. These conditions appear to compel the Louisville & Nashville to make a low rate to Louisville on slack coal and on nut coal and slack coal mixed, but permit a somewhat higher rate on other grades.

An examination of the tariffs of the Louisville & Nashville Railroad Company discloses that Lebanon, in this respect, is in no different position from the other local Louisville & Nashville points. Also, the present rates to Lebanon appear to be so constructed as to equalize the former refund on steam coal. On this record the Commission can not say that the present graded rates to Louisville result in unjust discrimination against Lebanon.

In accordance with the conclusions announced herein, the petition will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 271.  
PAPER RATES FROM MANITOWOC AND MILWAUKEE  
TO KAUKAUNA, WIS.

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*Submitted July 9, 1913. Decided October 13, 1913.*

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The propriety of an increase of a rate of  $5\frac{1}{2}$  cents on one kind of paper to  $7\frac{1}{2}$  cents, coincident with a reduction of a rate of 10 cents to  $7\frac{1}{2}$  cents on all other kinds of paper, from Milwaukee and Manitowoc, Wis., to Kaukauna, Wis., found to have been established.

*W. D. Hurlbut* for Union Bag & Paper Company and Wisconsin Pulp & Paper Manufacturers, protestants.

*Robert H. Widdicombe* for Chicago & North Western Railway Company, respondent.

REPORT OF THE COMMISSION.

*MEYER, Commissioner:*

By supplement 4 to its I. C. C. 7409 the Chicago & North Western Railway Company proposes to increase the rate on manila paper, carloads, from  $5\frac{1}{2}$  cents to  $7\frac{1}{2}$  cents per 100 pounds from Milwaukee and Manitowoc, Wis., to Kaukauna, Wis. On June 2, 1913, this supplement was suspended until October 3, 1913, pending an investigation of the reasonableness of the increase by this Commission. On September 23 the Commission entered a second order of suspension, further postponing the effective date of the tariffs until April 3, 1914.

Prior to March 13, 1908, the rate on all classes of paper from Milwaukee and Manitowoc to Kaukauna, Wis., was 10 cents per 100 pounds. On that date the Chicago & North Western Railway Company, in supplement No. 2 to its I. C. C. No. 6632, published a rate of  $5\frac{1}{2}$  cents per 100 pounds from Milwaukee and Manitowoc to Kaukauna on manila wrapping paper, carloads, minimum 30,000 pounds, the rate on all other paper remaining 10 cents. This  $5\frac{1}{2}$ -cent rate was the paper-stock rate in force at the time between these points. Tariffs on file with the Commission show that the  $5\frac{1}{2}$ -cent rate on paper stock applies only on business originating east of Lake Michigan and the Illinois-Indiana state line and south of the Ohio River. Paper stock originating in any other territory takes a rate of 8 cents per 100 pounds. On August 20, 1909, the tariff naming the  $5\frac{1}{2}$ -cent

rate was canceled by the issuance of a new tariff, C. & N. W. I. C. C. No. 7069, which failed to carry the rate of  $5\frac{1}{2}$  cents on manila paper. The attention of the Chicago & North Western Railway Company was called to the omission, and on January 6, 1910, by the issuance of supplement No. 4 to this tariff the  $5\frac{1}{2}$ -cent rate on manila paper was restored. During the interim the protestants in this proceeding shipped 51 carloads of paper from various points in the east under the 10-cent rate, which was the rate in effect upon the cancellation of the  $5\frac{1}{2}$ -cent rate. The protestants in this proceeding secured a refund on these shipments on our special docket No. 12962, amounting to \$1,239.05, the difference between  $5\frac{1}{2}$  cents, the rate formerly in effect, and the 10-cent rate charged.

The carriers testified that the  $5\frac{1}{2}$ -cent rate was put in effect on the theory that manila paper consigned to Kaukauna was to undergo further manufacture into paper bags, and for this reason the paper-stock basis seemed to be proper. Recently application has been made to the carriers to extend this  $5\frac{1}{2}$ -cent rate to all kinds of paper. Upon examination it was found that other kinds of paper were being used for the manufacture of bags, upon which the rate of 10 cents was charged, and for this reason it was decided to publish a rate of  $7\frac{1}{2}$  cents on paper of all classes. The result of the establishment of the  $7\frac{1}{2}$ -cent rate will be to reduce the rate on all classes of paper except manila by  $2\frac{1}{2}$  cents, manila alone being increased 2 cents. The rate on all classes of paper from Kaukauna to Milwaukee and Manitowoc is  $7\frac{1}{2}$  cents, and the suspended supplement will have the effect of making uniform the rates between these points in both directions.

The protestants claim that practically no paper is moved locally northbound between Manitowoc and Milwaukee and Kaukauna, but that it all comes from eastern points, thus making the  $5\frac{1}{2}$ -cent rate in reality a proportional rate. Therefore, they claim, there is no justification for making the rates northbound the same as southbound, for the reason that when a shipper has paid the  $7\frac{1}{2}$ -cent rate south that is all he is required to pay, and a carrier should be expected to make a lower rate in connection with the long haul north than for the purely local movement south.

Up to the year ended May 31, 1913, protestants shipped no paper from Milwaukee and Manitowoc to Kaukauna except manila. The average number of cars shipped annually is over 100. During the year ended May 31, 1913, however, they shipped 100 carloads of manila paper and 11 cars of other kinds. To establish a rate of  $7\frac{1}{2}$  cents on paper of all kinds would have the effect of raising the rate on 100 cars by 2 cents per 100 pounds and reducing it on 11 cars by  $2\frac{1}{2}$  cents. The fact that the  $5\frac{1}{2}$ -cent rate has been in effect for a period of over five years, as a raw-material rate, and that the paper

is still used as a raw material, protestants believe establishes its reasonableness.

The paper-stock rate of  $5\frac{1}{2}$  cents which is accorded to manila paper was established to apply to all articles which enter into the manufacture of paper itself, such as soda, ash, alum, cotton fiber, fuller's earth, potash, rosin, etc. Wrapping paper, the product of a manufacturing operation, can not properly be classed with the articles above enumerated. The Commission has repeatedly expressed the opinion that a railroad company is entitled to receive a higher rate for the transportation of a manufactured article than for the article or articles which enter into its manufacture.

The respondents contend that it is almost impossible to distinguish between manila paper and all other paper, which moves at the 10-cent rate and which likewise enters into the manufacture of paper bags. A difference in the rate according to the use to which a commodity is put has been condemned by this Commission, *In the Matter of Restricted Rates*, 20 I. C. C., 426, and affirmed by the Supreme Court of the United States, *I. C. C. v. B. & O. R. R. Co.*, 225 U. S., 326. Furthermore, it does not appear that the increased rate in issue results in unreasonable through charges.

We think that the respondents have established the propriety of the increase, and the order of suspension will be vacated.

28 I. C. C.



No. 5060.

JOHN TAYLOR DRY GOODS COMPANY ET AL  
v.  
MISSOURI PACIFIC RAILWAY COMPANY ET AL

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*Submitted September 8, 1913. Decided October 6, 1913.*

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Petition for rehearing denied.

*H. G. Wilson* for John Taylor Dry Goods Company.

REPORT UPON MOTION FOR REHEARING.

PROUTY, *Commissioner*:

This petition for rehearing is based upon an alleged error of fact. The petition quotes from the opinion of the Commission this language:

This claim is not based upon and does not put in issue the reasonableness of the rate charged.

The petitioner then refers to its petition, from which it quotes the following allegation:

Complainant further alleges that the charging and collection of the rate of 35 cents per 100 pounds from Mississippi River points to Kansas City on these shipments is unlawful; that the said 35-cent rate is unjust and unreasonable and in violation of section 1 of the act to regulate commerce.

By comparing the language of the Commission with the allegation in its petition the complainant draws the inference and asserts that while its petition put in issue the reasonableness of this rate the Commission by its opinion had entirely overlooked that issue.

When the above extract from the opinion is read by itself the conclusion drawn by the petitioner apparently follows, but when it is read in connection with the full context the error of the conclusion is at once manifest.

This case was heard in connection with four other cases, all of which were disposed of in a single opinion. The only reference to this case, as distinguished from the others, occurs in the last two paragraphs of that opinion, at page 214, which are given below in full:

As already noted, the Commission reduced the third-class rate by its decision in the *Burnham-Hanna-Munger* case from 35 to 30 cents, and this reduction was made effective by tariff October 26, 1910. This tariff continued in effect until

December 31, 1911, when it was supplanted by tariff filed in accordance with our order in the *Warnock case*. The complainants in No. 5060 contend that under the tariff of October 26 the rate legally applicable to the movement of cotton piece goods originating in New England from the Mississippi River to the Missouri River was 30 cents per 100 pounds, and that they are entitled to reparation in the amount of the difference paid under the 35-cent rate and the 30-cent rate which should have been collected.

This claim is not based upon and does not put in issue the reasonableness of the rate charged. It involves simply a question of tariff construction. The same question was presented and decided by the Commission in *Wheeler & Motter Mercantile Co. v. C. B. & Q. R. R. Co.*, 20 I. C. C., 141, adversely to the contention of the complainant. A motion for rehearing in that case was made and denied. That question must therefore be regarded as finally disposed of.

All these cases put in issue the reasonableness of the 35-cent rate, and that was the issue tried and mainly considered. That was the issue disposed of in the body of the opinion. The John Taylor Dry Goods Company made an additional claim to the effect that as a matter of tariff construction the rate of 30 cents was in effect for a certain period during which the 35-cent rate had been collected. This was peculiar to the case of this particular complainant and was participated in by no other complainant.

When the Commission in the concluding paragraph of its opinion said, in the language quoted by the petition, "this claim," etc., reference was clearly had to the claim stated in the preceding paragraph. The complaint did put in issue the reasonableness of the rate, and that question has been fully considered. This particular complainant made an additional "claim," which did not involve the reasonableness of the rate, but which was one of tariff construction.

That claim had been twice passed upon already, and the Commission did not feel called upon to again discuss it in that opinion, nor does it believe that it should be further considered. No other complainant asks us to reconsider our holding as to the reasonableness of the rate, and we see nothing in the complaint or in the petition of this complainant calling for such action. The petition will therefore be denied.

28 I. C. C.

# **INVESTIGATION AND SUSPENSION DOCKET No. 219.** **BROOM RATES TO COLORADO POINTS.**

*Submitted August 19, 1913. Decided October 14, 1913.*

Proposed increase in rates for transportation of brooms from various points to Colorado common points found to have been justified.

*Martin E. Casto* for Wichita Business Association.

*W. V. Hardie* for Oklahoma Traffic Association, Criter Broom Company, and *W. E. Killinger*.

*C. B. Bee* for Corporation Commission of Oklahoma.

*A. A. Hurd*, and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

*F. J. Shubert*, *W. H. Dickinson*, and *A. A. Hurd* for Chicago, Rock Island & Pacific Railway Company.

*D. R. Lincoln* for Missouri Pacific Railway Company.

*H. A. Scandrett* and *A. A. Hurd* for Union Pacific Railroad Company.

*F. Montmorency* for Chicago, Burlington & Quincy Railroad Company.

## **REPORT OF THE COMMISSION.**

**MARBLE, Commissioner:**

By an order dated February 6, 1913, the Commission suspended tariffs which increased certain carload rates on brooms to Colorado common points 10 cents per 100 pounds. The present and proposed rates, in cents per 100 pounds, from representative points of origin follow:

From—	Rate.	
	Present.	Proposed.
Chicago, Ill.....	110	120
Memphis, Tenn.....	100	110
Peoria, Ill.....	90	100
Mississippi River points.....	95	105
St. Paul, Minn.....	45	55
Missouri River points.....	40	50
Wichita, Kans.....		
Oklahoma City, Okla.....		

The present rates apply to both broom corn and brooms.

At the hearing herein the carriers offered in justification of this increase evidence which may be summarized thus:

Brooms, as a manufactured article, should, in accordance with accepted principles, pay a rate higher than broom corn, which is a raw material.

The average carload weights of all shipments of brooms and broom corn during the period of greatest movement over the lines and to the points in interest, in 1912, was 13,242 pounds for brooms and 23,776 pounds for broom corn, 32 carloads of brooms and 883 carloads of broom corn having been carried.

Brooms are worth from \$198 to \$438 per ton, whereas broom corn is worth from \$35 to \$90 per ton.

Ton-mile revenues on the proposed rates on brooms are lower from Missouri River points, Lincoln, Nebr., Deshler, Nebr., and Wichita, Kans., than from the same points to representative Texas destinations equally distant; and the conditions of haul from these points of origin to Texas are more favorable than to Colorado common points.

Western classification No. 51, as approved by this Commission, recognizes that brooms should pay a higher rate than broom corn, rating the two articles second and third class, respectively.

Minimum car earnings on brooms at the rates now suspended will be only \$77, whereas similar car earnings on broom corn amount to \$81.

The former rates were the same on both commodities only because one line, the Chicago, Rock Island & Pacific Railway Company, some seven or eight years ago, made its broom rate the same as the broom-corn rate, in order to assist a new enterprise, at Deshler, Nebr. This forced a similar adjustment on the other routes.

Several protests were withdrawn before hearing. Protestants appeared representing manufacturers located at Wichita and Oklahoma City. Their main contentions were that Wichita should have a less rate than Missouri River points to Colorado and that Oklahoma City should be given a rate not higher than the Missouri River group rate. These contentions, however, are not in issue here, and no opinion regarding them is here expressed. Beyond this the Wichita protestants offered evidence that Wichita and Denver broom manufacturers draw broom corn from the same general territory and submitted comparative statements showing the rates on broom corn to Denver to be on the average 10.4 cents per 100 pounds higher than to Wichita. It was shown, however, that the total transportation costs of assembling at Wichita the material for a carload of brooms, and of subsequently shipping a carload of brooms to Denver, is greater by \$47.06 than the transportation costs of assembling at Denver.

25 I. C. C.

bling the same material at Denver. This advantage of the Denver manufacturer does not extend beyond the Denver market, however. The Wichita manufacturer can reach other Colorado common points at Denver rates. The Denver manufacturer in shipping to them must pay, of course, the rate upon brooms from Denver, in addition to the rates previously paid upon the raw material.

The Commission is here called upon only to determine the propriety of the new rate upon brooms. It is apparent that the carriers are entitled to a somewhat higher rate for the transportation of brooms than would be justifiable for the transportation of broom corn. If the general rate adjustment is unfair to the Wichita broom manufacturers when rates to all Colorado points are taken into consideration, that must be shown in a proceeding directed specifically at that adjustment, in which the Commission would have power to deal with the rates responsible for the unfairness.

The plea of the Oklahoma City protestants is to the effect that their main market, outside of Oklahoma, is Colorado, and they do not want it restricted. A comparison of rates from and to various points was offered to show that the rates from Oklahoma City generally are unduly high, but this also is an attempt to raise large issues of rate relationship not properly to be decided here.

The carriers have justified the rates here in question. An order will be entered vacating the suspension order herein as of November 15, 1913, and dismissing this proceeding.

23 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 235.  
CALIFORNIA-NEVADA LUMBER RATES.

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*Submitted September 4, 1913. Decided October 14, 1913.*

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Where a through rate between two points exceeds the sum of the intermediate rates, the desire of the carrier to avoid comparison between the through rate and such combination does not justify it in increasing one of the factors of the latter.

*Seth Mann and William R. Wheeler* for Traffic Bureau of San Francisco Chamber of Commerce.

*George D. Squires* for Southern Pacific Company.

REPORT OF THE COMMISSION.

**MARBLE**, *Commissioner*:

This proceeding was instituted by the Commission to determine the propriety of certain increased rates for the transportation of lumber from Newcastle, New England Mills, Colfax, and Gold Run, all in the state of California, to points intermediate between California-Nevada state line and Reno, Nev., by way of the railroad of the Southern Pacific Company. These increased rates were filed with the Commission in supplement No. 16 to Southern Pacific tariff I. C. C. No. 3328, the effectiveness of which was suspended by this Commission on March 18, 1913. By this tariff it was proposed that the commodity rate of \$2 per ton to Verdi and \$2.25 per ton to Reno for the above transportation should be canceled, leaving class rates only in effect. These class rates amount to \$5.40 per ton and are so high that no contention is made that they should be regarded as reasonable.

At the hearing the carrier's justification for the cancellation of these commodity rates consisted of (1) a claim that the commodity rates were "virtually milling-in-transit rates"; (2) that the occasion for such rates has passed, inasmuch as no lumber is now manufactured at the points of origin above named; and (3) that the commodity rates are unreasonably low for the service rendered, as the haul is over the Sierra Nevada Mountains.

These commodity rates upon the face of the tariff show no indication of being transit rates. They are in every respect open and

unrestricted rates made in the ordinary manner. They are contained in a tariff which contains also certain transit rates to Verdi, and are on a different basis from such rates. For instance, the commodity rate in question here of \$2 per ton from Newcastle to Verdi covers a distance of 112 miles. The tariff which contains this rate shows also a transit rate of 85 cents per ton from Red Bluff, Cal., to Verdi, a distance of 242 miles. It is to be noted, moreover, that Newcastle is directly intermediate between Red Bluff and Verdi. Other transit rates shown in the tariff are at even greater variance with the commodity rates here in dispute. For instance, from Honcut, Cal., to Verdi, a distance of 173 miles, a transit rate of 25 cents per ton is published. All of the points of origin of the commodity rates here under consideration are directly intermediate between Honcut and Verdi. It is impossible to accept the theory of the railroad company that these commodity rates are to be regarded as transit rates.

It affirmatively appears upon the record that a considerable tonnage of lumber has been moved upon these rates within the last year. It is true that this lumber was previously shipped from points upon tidewater near San Francisco. The possibility of using these rates has arisen from the fact that the rate from San Francisco and near-by points to Verdi and Reno is in excess of the sum of the rate from such points of origin to Newcastle and the rate from Newcastle to either Verdi or Reno. That is to say, the Southern Pacific Company is charging a through rate in excess of the sum of the local rates to and from these intermediate points. It is frankly stated in the record that the purpose of the attempted cancellation is to remove one of the factors from a rate combination which might otherwise operate to reduce the rate from San Francisco and near-by points to these Nevada destinations.

The Merchants' Exchange of the city of San Francisco and a number of lumber dealers appeared at the hearing in opposition to the proposed cancellation. Exhibits submitted by them indicate that these commodity rates yield to the Southern Pacific Company a higher revenue per ton per mile and a higher revenue per car per mile than the average earnings on all traffic during the year ending June 30, 1912. It is further shown that same is true of the rate made from San Francisco and near-by points to either Reno or Verdi by an addition of the rate from such points of origin to Newcastle to the rate from Newcastle to the Nevada destinations. Showing is further made that the return per ton per mile from these commodity rates is in excess of the return to the carrier from similar transportation over other mountainous lines in its system.

It is the view of the Commission that the record indicates that the proposed cancellation of rates is made only for the purpose of removing a factor which may indicate a violation of the fourth section of the act to regulate commerce. No attempt has been made to justify the rates which will result, beyond the statement that nothing will be offered for transportation thereunder. This can not be accepted as a justification for the proposed change in rates. An order will, therefore, issue requiring the maintenance of rates not in excess of those now in effect via the line of this carrier from Newcastle, New England Mills, Colfax, and Gold Run, all in the state of California, to Reno, Nev., and points intermediate between Reno and the California-Nevada state line upon the line of said carrier.

28 I. C. C.



No. 3932.  
**ACME PORTLAND CEMENT COMPANY**  
v.  
**AMERICAN EXPRESS COMPANY.**

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*Submitted September 29, 1911. Decided October 14, 1913.*

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1. Where shipper refused to state, as required by tariff, the market value of shipment of stocks and bonds, carrier was under no obligation to transport such securities and it was its duty to refuse the shipment.
2. Carrier not entitled to assess charges on such shipment, accepted in violation of its tariff, on a par value far in excess of actual value of the securities. Reparation awarded.

*B. B. Adams* for complainant.

*E. M. Whittle* for defendant.

**REPORT OF THE COMMISSION.**

**MARBLE, Commissioner:**

Respondent transported for the petitioner from New York City to Spokane, Wash., a box containing certain bonds and stock. Petitioner paid, under protest, charges to the amount of \$2,172.50, this being the amount claimed by the respondent. The tariff rate for the transportation is conceded to have been \$1.12½ per \$1,000 upon the actual value of the shipment. The Commission is here called upon to determine such actual value.

The petitioner was the owner of certain shale and limestone deposits (situate in Idaho) suitable for the manufacture of portland cement. To obtain money for development, petitioner executed a mortgage to the Guarantee Trust Company, of New York, as trustee, and this trust company certified the issue of bonds of the par value of \$900,000. For the purpose of sale the trustee delivered to the Title Guarantee & Trust Company, of New York, all of these bonds and 10,500 shares of stock, the latter being of a par value of \$1,050,000.

The negotiations for a sale of these bonds were fruitless, and the petitioner, on April 25, 1910, contracted to sell its cement deposits free and clear of all encumbrances, for \$140,666.67. This contract, at the time of the hearing, was still in force. In order to carry out its contract, both stockholders and trustees of petitioner authorized the cancellation of the bond issue and the repurchase of any bonds sold. The Title Guarantee & Trust Company was then directed, pursuant

to this resolution, to ship to petitioner at Spokane, Wash., all unsold bonds and stock so that they might be canceled.

On June 20, 1910, the Title Guarantee & Trust Company, having disposed of a portion of these bonds and stock, delivered the remainder to the respondent, packed in a wooden case, consigned to the Union Trust Company of Spokane, Wash. This box was marked "Corporate bonds. Bonds, par, \$886,500. Stock, par, \$1,044,600.00. Collect."

The Title Guarantee & Trust Company in delivering the securities to the respondent refused to place a value upon the shipment. The respondent at the time of shipment was bound by its tariff, which provided:

Shippers must be required to mark on all packages of securities the character and the market value of the contents thereof. \* \* \* Shipments must not be received for transportation in the money classification unless the value is declared by the shipper and marked by him upon the package.

This reasonable regulation not having been complied with by the shipper, the respondent was under no obligation to carry these securities, and it had no tariff covering their carriage. Under the circumstances it was respondent's duty to refuse the shipment. It chose, instead, to itself determine the market value of these securities by adopting the par value, an amount greatly in excess of the market value, and assessed charges accordingly.

Under all the circumstances disclosed by this record, and as a basis for the order here, the Commission concludes that the value of the physical property represented by them may be taken as the value of these securities. That value was \$140,666.67.

The respondent is entitled to its tariff rate at the time of this shipment computed on a valuation of \$140,666.67 for these securities. This amounts to \$158.25. Petitioner is therefore entitled to a refund of \$2,014.25 as an overcharge, and the order herein will so provide.

28 L. C. C.

No. 5354.

**IN THE MATTER OF PRACTICES AND REGULATIONS  
GOVERNING THE ISSUANCE, SALE, AND EXCHANGE  
OF MILEAGE BOOKS.**

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*Submitted May 22, 1913. Decided October 14, 1913.*

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1. While issuance of mileage by carriers may be voluntary, conditions attached to the use thereof must not make discriminations or other positive wrongs forbidden by the act to regulate commerce.
2. Regulation requiring exchange of coupons from interchangeable mileage book for mileage exchange tickets before commencing journey not found to be discriminatory or otherwise in violation of the act.

*John G. Richards, jr., G. McW. Hampton, and J. P. Darby for Railroad Commission of South Carolina.*

*J. Frasier Lyon and M. B. De Bruhl for state of South Carolina.*

*J. H. Dudley for Travelers' Protective Association.*

*Alfred P. Thom, S. H. Hardwick, and Sanders McDaniel for Southern Railway Company.*

*R. O. Aleton, P. A. Willcox, and G. B. Elliott for Atlantic Coast Line Railroad Company.*

*William A. Northcutt for Louisville & Nashville Railroad Company.*

*Charles T. Mandel for Carolina, Clinchfield & Ohio Railway and Carolina, Clinchfield & Ohio Railway of South Carolina.*

*A. G. Jackson for Georgia Railroad.*

*I. C. Haile for Central of Georgia Railway.*

*C. C. Graves for South Carolina Railway and Charleston & Western Carolina Railway.*

*W. J. Craig for Columbia, Newberry & Laurens Railroad Company.*

*C. P. Ryan for Seaboard Air Line Railway.*

*R. Walton Moore for Alabama Great Southern Railroad Company; Alabama & Vicksburg Railway Company; Atlanta & West Point Railroad Company; Atlantic Coast Line Railroad Company; Augusta Southern Railroad Company; Blue Ridge Railway Company; Central of Georgia Railway Company; Charleston & Western Carolina Railway Company; Cincinnati, New Orleans & Texas Pacific*

Railway Company; Danville & Western Railway Company; Georgia Southern & Florida Railway Company; Hartwell Railway Company; Illinois Central Railroad Company; Macon, Dublin & Savannah Railroad Company; Mobile & Ohio Railroad Company; Nashville, Chattanooga & St. Louis Railway; New Orleans & North-eastern Railroad Company; Norfolk & Western Railway Company; Richmond, Fredericksburg & Potomac Railroad Company; Seaboard Air Line Railway; Southern Railway Company; Southern Railway Company in Mississippi; Western Railway of Alabama; Vicksburg, Shreveport & Pacific Railway Company; Virginia & Southwestern Railway Company; and Western & Atlantic Railroad.

#### REPORT OF THE COMMISSION.

##### *MARBLE, Commissioner:*

This is an investigation instituted by the Commission on its own motion for the purpose of determining whether or not the practices, rules, and regulations of the railroad carriers serving South Carolina and adjacent states, with regard to the issuance, sale, and exchange of passenger mileage books, are just and reasonable, or are discriminatory or otherwise unlawful.

This proceeding was prompted by a complaint of the Railroad Commission of South Carolina, directed against the practice of these carriers which requires that mileage shall be exchanged for tickets instead of being used directly for checking of baggage or for transportation upon trains, and the hearings show that there is practically no complaint on any other point.

The prevailing passenger rate upon railways east of the Mississippi and south of the Ohio and Potomac rivers is  $2\frac{1}{2}$  cents per mile, a few carriers charging 3 cents per mile. Prior to the year 1907 mileage books in this territory were not generally interchangeable. They were made so in 1907, but were sold at the rate of  $2\frac{1}{2}$  cents or more per mile. In 1908, in response to an agitation in Virginia, North Carolina, South Carolina, and Georgia for a passenger rate of 2 cents per mile, practically all of the rail carriers east of the Mississippi and south of the Ohio and Potomac rivers entered into an arrangement for the sale of mileage books at a rate of 2 cents per mile. By whatever carrier sold, these books, by their terms, were to be honored by any rail carrier in this large territory. The carriers, however, made a condition that coupons should be exchanged at stations for tickets, and should no longer be receivable for transportation or checking of baggage without such exchange.

In the year 1912 the legislature of the state of South Carolina passed an act providing:

That any railroad company selling mileage books for transportation is hereby required to receive coupons from mileage books sold by said railroad on its  
28 I. C. C.

train for transportation within the state, and to check baggage for passengers upon presentation of said mileage books.

A similar act passed by the legislature of Georgia was vetoed by the governor of that state. Subsequently the Railroad Commission of Georgia by a divided vote prescribed that mileage books sold in that state should be receivable upon the trains of the carrier selling the same. This requirement of the Georgia commission has been enjoined by the courts and is now in course of adjudication.

The railroads operating in South Carolina, in response to the above legislation, caused to be stamped upon all interchangeable mileage books thereafter sold the following:

Coupons from this book will not be accepted on and after May 1, 1912, in exchange for tickets for a journey wholly within the state of South Carolina.

A new form of mileage book was provided for intrastate travel in South Carolina. It was made noninterchangeable, that is, good only upon the line of the road issuing it; it was receivable only for transportation wholly within the state of South Carolina; and the coupons were made receivable for transportation, no exchange for tickets being required.

It is obvious that the present situation in South Carolina is less satisfactory to travelers than the one which obtained before the legislation above set forth. The interchangeable mileage book is still sold in South Carolina. It is good for journeys from points in South Carolina to points in other states, and from points in other states to points in South Carolina. It is also good for transportation generally through the territory above described, whether state or interstate, with the exception of transportation wholly within South Carolina. Travelers in the latter state to secure the mileage-book fare, must supply themselves with books restricted to that state; and while they are relieved from exchanging the coupons of such mileage for tickets, they must undertake the burden of securing a separate book for each carrier over whose lines they desire to travel.

The state commission of South Carolina complains that the response of the carriers to the legislation of that state has resulted in great inconvenience to the public; that the requirement applying to the interchangeable mileage books used in interstate travel, to the effect that the coupons must be exchanged at ticket windows, is unreasonable *per se*, and is a discrimination against interstate travelers in South Carolina as compared with intrastate travelers therein whose mileage is good upon trains without such exchange. This Commission is asked, therefore, to condemn the practice of the carriers east of the Mississippi and south of the Ohio and Potomac rivers by which mileage is good only for exchange at ticket offices, and to require that such mileage shall be receivable upon trains for

transportation. It is suggested by the South Carolina commission that the carriers selling this interchangeable mileage should be required to make it receivable on trains for state journeys in South Carolina. Another suggestion is that the one-line mileage books issued in South Carolina and now receivable only for transportation wholly within that state, should be made generally interchangeable and receivable upon trains for interstate transportation throughout the southern territory above described. These suggestions can not be adopted in any view of the case. The Commission clearly has no power to require the carriers to receive the interchangeable mileage coupons upon trains for journeys wholly within that state. The regulation of transportation wholly within South Carolina is still with the state authorities and beyond the control of this Commission. Neither has this Commission power to direct that the mileage sold in South Carolina, by its terms good only for transportation wholly within that state, shall be receivable for interstate journeys.

To illustrate some of the arguments upon which the Commission is asked to condemn the exchange regulation as unreasonable, two extracts are taken from the record:

You get into a small station behind an excursion and it is almost impossible to get into the station, much less get your ticket. Under the exchange proposition, that feature is extremely objectionable to the travelling men, and necessarily must be. If you could get a comfortable seat ahead of the crowd, you do not come into contact with that class of people.

Further on in the record—

Before the exchange proposition was inaugurated, I was living near enough to my station to sit on my front porch until I heard the train coming in, and then I bade my family good-by and would catch the train. That is all cut out now. That was a great pleasure and satisfaction to me.

One of the thoughts that runs throughout the proceeding is exemplified in the following testimony:

I think the commercial traveler who is a constant traveler and patron of transportation lines is certainly more entitled to a cut or an inside price than any person, lady or gentleman, who takes an occasional trip.

It must not be considered, however, that the complaints against the exchange features are all based upon a desire to secure discriminatory advantages. It appears, for instance, that it takes slightly longer to issue a train ticket in exchange for mileage than for cash. It also appears that certain roads use forms of train tickets which do not lend themselves to expeditious handling by station agents as do the forms in use on other lines. Moreover, at some stations a special window is designated for the exchange of train tickets for mileage, and it is claimed that persons holding mileage are not accorded as prompt attention at such stations as those buying tickets for cash. Attention is drawn to these matters in the belief that the carriers will introduce the necessary corrective measures.

It also appears that the exchange feature has caused some discomfort to travelers attempting to use these mileage books, in connection with tickets to an intermediate point, for transportation to this southeastern territory from northern points beyond the Potomac River. The mileage books not being good on trains, such passengers must go to the ticket office at the intermediate point and secure train tickets. The record shows, for instance, that a lady traveling from New York City to a point in South Carolina bought a train ticket to Washington and depended upon mileage for transportation from Washington to destination. She was compelled to leave her train at Washington in the night and exchange mileage for a ticket. As to this, it is to be said that such travelers use mileage for portions of their journeys only in order that they may secure transportation at less rates than those published for such journeys. By paying the tariff rates for through transportation they can in all cases secure through tickets. An attempt to avoid such through rates by paying the ticket rate to an intermediate point and the mileage rate beyond must be accompanied by a compliance with the conditions of the tariffs under which mileage is sold.

The testimony was largely cumulative and, as a whole, unsatisfactory, being in great measure the opinions of the witnesses. From the mass of testimony the following salient points stand forth: That to have his mileage honored on the train would be more convenient to the holder than to exchange it at the ticket window; that there is practically no difference in convenience in checking baggage whether upon mileage book or exchange ticket, but that the former method is more susceptible of abuse; that so far as the carriers are concerned it is preferable to relieve the conductor from the collection of mileage; that the use of mileage has steadily grown in volume and popularity from 1908 to 1912, even with the exchange requirement; that interchangeable mileage throughout the country is generally safeguarded by the exchange requirement or some other device; and that this regulation is actually of service in keeping the accounts of the carriers and does in some degree, the exact extent being disputed, protect the revenues of the carriers.

The holder of a mileage book sold by one of the southern railroads is the recipient of a substantial reduction from normal passenger fares. He secures for \$20 the same transportation for which the occasional purchaser of tickets must pay from \$25 to \$30. The carriers selling these books, for convenience in accounting and for other reasons of their own, provide that the holders shall use the same only for the purchase of tickets. It is this provision that is attacked. But this does no more than place the holders of these books upon a precise equality with passengers who exchange cash for tickets in securing

the credentials for transportation. The holders of mileage gain an advantage over other passengers so far as rates are concerned and are not at a disadvantage otherwise.

If it were not for the provision of section 22 of the act to regulate commerce, that nothing in the act shall prevent the issuance of mileage tickets, it is debatable whether the concession from the regular fare made to the purchasers of mileage books would be lawful. While that question is foreclosed by the provision in section 22, the very fact that the mileage book owes its existence to a special permission of the statute is significant. *Eschner v. P. R. R. Co.*, 18, I. C. C., 60.

Before condemning the exchange regulation the Commission must be prepared to condemn it everywhere in the United States. In the territory east of the Mississippi River, north of the Ohio River, and west of the Buffalo-Pittsburgh line, for instance, mileage books are sold which are not receivable upon trains, but which must be exchanged for tickets. Transportation upon these mileage books is secured by the holders at a net rate of 2 cents per mile. Unlike the carriers in the south, however, the carriers in this central freight association territory require that \$25 shall be paid for each 1,000-mile book, \$5 being refunded for the cover when presented by the original purchaser. Were the Commission to condemn the requirement here it would virtually be doing so there also.

It appears that public regulating authorities have no power to compel the issuance of such mileage books. In 1891 the legislature of Michigan provided by statute that rail carriers in that state should sell 1,000-mile tickets at a reduction from the rate per mile which it had fixed as the reasonable maximum to be paid by travelers generally. In holding this provision to be void, the Supreme Court said:

Regulations for maximum rates for present transportation of persons or property bear no resemblance to those which assume to provide for the purchase of tickets in quantities at a lower than the general rate, and to provide that they shall be good for years to come. This is not fixing maximum rates, nor is it proper legislation. It is an illegal and unjustifiable interference with the rights of the company. \* \* \* If the maximum rates are too high in the judgment of the legislature it may lower them, provided they do not make them unreasonably low as that term is understood in the law; but it can not enact a law making maximum rates, and then proceed to make exceptions to it in favor of such persons or classes as in the legislative judgment or caprice may seem proper. \* \* \* It is no answer to the objection to this legislation to say that the company has voluntarily sold thousand-mile tickets good for a year from the time of their sale. What the company may choose voluntarily to do furnishes no criterion for the measurement of the power of a legislature. Persons may voluntarily contract to do what no legislature would have the right to compel them to do. \* \* \* It is a pure, bald, and unmixed power of discrimination in favor of a few of the persons having occasion to travel on the road and permitting them to do so at a less expense than others, provided they buy a certain number of tickets at one time. *L. S. & M. S. Ry. Co. v. Smith*, 173 U. S., 684.



Section 22 of the act to regulate commerce provides in part: "That nothing in this act shall prevent \* \* \* the issuance of mileage, excursion, or commutation passenger tickets." This language has been construed as a permission to the carriers, and not as a grant of authority to the Commission to compel the carriers to furnish passenger transportation at less than the reasonable maximum. *Field v. S. Ry. Co.*, 13 I. C. C., 298; *Eschner v. P. R. R. Co.*, 18 I. C. C., 60; *The Commutation Rate case*, 21 I. C. C., 428; and *In Re Mileage, Excursion, and Commutation Tickets*, 23 I. C. C., 95.

It appearing, therefore, that the issuance of mileage books is voluntary, to what extent may the carriers attach conditions governing their use? Numerous decisions of state courts have been brought to our attention holding that where a carrier furnishes special transportation at less than its general rate it may attach to the contract such lawful conditions as it chooses. In the case of *Eschner v. P. R. R. Co.*, 18 I. C. C., 60, 63, and 64, this Commission said:

We think it clear, therefore, that a carrier may not only withhold such special fares from its patrons by omitting to provide for them in its tariffs, but may at its pleasure, at least so long as no undue discrimination or other violation of the act is involved, attach conditions and restrictions to the use of such special fares. \* \* \* If a carrier may extend or withhold the privilege of mileage, excursion, and commutation tickets, it would seem to follow that it may attach to them, as an integral part of the contract, conditions of the kind involved in this proceeding; and since we can not compel carriers to issue such tickets, we see no grounds upon which we may compel them to modify the conditions which they attach to them, so long, at least, as these conditions result, as heretofore stated, in no discrimination nor in the violation of any other provision of the act.

This Commission is not able to agree that the acceptance of the state mileage upon trains and the contemporaneous requirement that interstate mileage must be exchanged for tickets constitute a discrimination against interstate travelers. The case is not one that responds to the tests for discrimination. A discrimination involves the idea of a relationship between the person favored and the person injured. It operates to give one patron of the carrier an advantage over another, and thus by favoring one injures others. A practice that is bad only because discriminatory can always be remedied by withdrawing the benefit from the favored party or by extending it to the injured parties. In this case, no interstate traveler is injured or hindered in any way by the fact that state travelers in South Carolina may use state mileage upon trains. No interstate traveler would be saved from any burden or inconvenience by the withdrawal from travelers in South Carolina of the privilege secured by the legislation above recited.

Neither is the case one that responds to the tests for unreasonableness. The rates provided for the purchasers of train tickets for cash,

and the requirements made of such purchasers, must be taken as indicating the legally reasonable standard, or such rates and requirements must be changed. Such purchasers must now pay a higher rate than the mileage rate, and must exchange their cash for tickets at the stations before checking baggage and before boarding trains. If they tender cash upon trains, they are charged a penalty in addition to the single-ticket rate. Nowhere in the act can the Commission find any authority for condemning the requirement that holders of mileage shall procure train tickets, without at the same time condemning the same requirement as applied to those desiring to check baggage and secure transportation upon cash fares.

The authority of the Commission over such regulations as the one here considered is to require them to be amended or withdrawn if they operate to make discriminations or other positive wrongs forbidden by the act to regulate commerce. Such wrongs have not been disclosed by the record. The record here has shown some inconveniences to holders of mileage tickets, but these can be removed by increased efficiency in station operation which will benefit all travelers alike.

28 L. C. Q.

INVESTIGATION AND SUSPENSION DOCKET No. 205.  
REFRIGERATION OF FRUITS AND VEGETABLES BE-  
TWEEN POINTS IN COLORADO AND UTAH.  
IN THE MATTER OF THE INVESTIGATION AND SUS-  
PENSION OF ADVANCES IN CHARGES BY CARRIERS  
FOR THE REFRIGERATION OF CARLOAD SHIPMENTS  
OF FRUITS, VEGETABLES, ETC., BETWEEN POINTS  
IN COLORADO AND UTAH.

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*Submitted August 21, 1913. Decided October 6, 1913.*

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Proposed increase to \$40 per car having been withdrawn, and previous rate of \$35 per car reinstated, proceeding dismissed.

*Joseph S. Jaffa* for Lawrence-Hensley Fruit Company, protestant  
*E. N. Clark* for Denver & Rio Grande Railroad Company.  
*H. A. Scandrett, N. H. Loomis, and P. L. Williams* for Union  
Pacific Railroad Company and Oregon Short Line Railroad Com-  
pany.

REPORT OF THE COMMISSION.

**MARBLE, Commissioner:**

This proceeding was instituted on December 27, 1912, to determine the propriety of a proposed increased rate for the refrigeration of fresh fruits and melons moving in carloads between Utah common points and Colorado points. The lines primarily interested are the Oregon Short Line Railroad Company (hereinafter called the Oregon Short Line) and the Union Pacific Railroad Company as one route, and the Denver & Rio Grande Railroad Company (herein-  
after called the Rio Grande) as another route.

In 1908 the tariffs of C. H. Griffin, joint agent for the carriers, named a rate of 12½ cents per 100 pounds, minimum \$1.25 per car, for icing fresh meats and other perishable products, between the above-mentioned points, but this item specifically referred to another item for the icing charges on fresh fruits and melons. The item thus specifically referred to originally named a rate of \$30 per car, which was subsequently and before January 1, 1910, increased, first to \$33 and later to \$35.

After January 1, 1910, and while the rate stood at \$35, the Oregon Short Line and the Rio Grande withdrew the same from agent Griffin's joint tariff, noting therein a reference to their individual

tariffs, which also carried the rate of \$35. Succeeding individual issues of both these lines increased the rate to \$40 per car, and while this latter rate applied agent Griffin's I. C. C. No. 11 became effective December 15, 1911. Item 86 therein, under the caption "packing and preservation," carried the same above-mentioned 12½ cents per 100 rate for icing fresh meats or other perishable freight, but failed to refer to any exceptions. The same tariff in item 29 referred to individual lines' issues for refrigeration charges. To avoid the confusion thus caused by the conflict of tariffs, agent Griffin issued supplement 8 to his I. C. C. No. 11, effective January 1, 1913, wherein item 36-A referred to Oregon Short Line I. C. C. No. 1748 and Rio Grande I. C. C. No. 5106-B for the rates for icing deciduous fruits (green), berries, grapes, melons, and vegetables. As these two individual issues then named the rate of \$40, the effect of said supplement 8, but for the suspension order in this proceeding, would have been to increase the charge for refrigeration to that amount. In May, 1913, however, the rate of \$40 was canceled and a rate of \$35 again published. If, therefore, supplement 8 of Griffin's I. C. C. No. 11 be now allowed to go into effect, the rate will again be \$35 per car.

This rate the Oregon Short Line and the Rio Grande defended upon hearing. In support of its reasonableness the carriers offered evidence of the costs and amount of ice used at the various icing stations in handling each shipment moved by the Rio Grande in August and September, 1912, and by the Union Pacific Railroad Company during that entire year. Adding thereto the other elements of cost determined by the Commission in the *Arlington Heights case*, 20 I. C. C., 106, the carriers demonstrated that the costs warrant the imposition of the rate of \$35.

The only protestant, the Lawrence-Hensley Fruit Company, stated upon hearing that its protest would be withdrawn if the \$35 rate would be guaranteed by the carriers.

Under these circumstances, and considering especially that the rate defended is the same as was in effect on January 1, 1910, the Commission finds the rate of \$35 per car for icing deciduous fruits (green), berries, grapes, melons, and vegetables has been justified. An order vacating the suspension will be entered effective November 1, 1913.

28 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 251.  
NEW MEXICO COAL RATES.

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*Submitted July 23, 1913. Decided October 6, 1913.*

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Proposed increases found to be result of dispute between carriers over divisions and not justified.

*Albert L. Vogl* for Southwestern Coal Company, J. L. A. Thomas Coal Company, and C. W. Hull Company, protestants.

*F. M. Williams* for St. Louis, Rocky Mountain & Pacific Railway Company.

REPORT OF THE COMMISSION.

*MARBLE, Commissioner:*

The St. Louis, Rocky Mountain & Pacific Railway Company (called hereinafter the Rocky Mountain line) extends from Des Moines, N. Mex., where it connects with the Colorado & Southern Railway Company, westward some 94 miles. Connecting with the Rocky Mountain line at Raton, N. Mex., is the Santa Fe, Raton & Eastern Railway Company (called hereinafter the Raton & Eastern) operating a line about 10 miles in length. The Rocky Mountain line has two other main outlets—via the Atchison, Topeka & Santa Fe Railway Company at Raton, N. Mex., and Preston, N. Mex., and via the El Paso & Southwestern Railway Company (called hereinafter the El Paso & Southwestern) at Colfax, N. Mex. Through the latter's connection at Tucumcari, N. Mex., the Rocky Mountain line and the Raton & Eastern have a connection with the Rock Island lines—the Chicago, Rock Island & Pacific Railway Company and the Chicago, Rock Island & Gulf Railway Company.

Considerable bituminous coal is mined at points on the Rocky Mountain line and the Raton & Eastern. Since 1908 this coal has in part found a market at points on the Rock Island lines in Iowa, Missouri, Nebraska, Kansas, Oklahoma, and Texas, reaching such points on joint rates, mainly via Colfax and Tucumcari, and in small part, via Des Moines. To some common destinations there were, and are, joint rates via Preston and the Atchison, Topeka & Santa Fe Railway Company, but these have been, without exception, 10 cents per ton over the rates via the Rock Island lines.

As originally established, the rates on bituminous coal, carloads, from points on the Rocky Mountain line and on the Raton & Eastern via either Tucumcari or Des Moines, to Rock Island lines' desti-

nations in these six states, were made the same as those from Dawson, N. Mex., located on the El Paso & Southwestern. The divisions of such rates allowed the Rocky Mountain line 40 cents per ton until November 1, 1910, when the amount was reduced to 35 cents per ton. Out of its allowances the Rocky Mountain line pays to the Raton & Eastern a division of 10 cents per ton on coal received from that line.

Early in 1912 the Rock Island lines and the El Paso & Southwestern changed their divisional basis on these coal rates via Colfax and Tucumcari and made the divisions upon the basis of mileage. Then the El Paso & Southwestern demanded 52 cents per ton as a minimum return to it out of the division accruing north of Tucumcari. This left the Rocky Mountain line only 6 cents on shipments destined to Omaha, Nebr., and somewhat larger amounts on shipments to destinations west of Omaha.

Under these conditions the previously established rates were allowed to remain for about one year, the Rocky Mountain line meanwhile endeavoring to induce its connections to allow greater divisions. Unsuccessful in this, the Rocky Mountain line undertook to cancel all joint rates where the new divisional arrangement allowed it less than 20 cents per ton. The cancellation was attempted by supplement No. 11 to St. Louis, Rocky Mountain & Pacific Railway I. C. C. No. 73, effective April 17, 1913, which would have made combination rates the only available rates via the Tucumcari route to numerous Rock Island lines points, among them being Kansas City and St. Joseph, Mo., Omaha and Lincoln, Nebr., Atchison, Salina, and Wichita, Kans., and Ryan and Terral, Okla. These combinations are from 50 cents to \$2.25 per ton above the present rates. Following numerous protests the above-mentioned supplement was, by order dated April 15, 1913, suspended.

At the hearing the Rocky Mountain line was represented by its general freight agent, but neither the Rock Island lines nor the El Paso & Southwestern appeared. No contention was made that the joint rates are unreasonably low or that the proposed increases are reasonable. On the contrary, the Rocky Mountain line admits that the rates sought to be canceled are reasonable and insists that the only excuse for the cancellation is a failure to agree upon divisions.

It is not a new doctrine that a mere failure to agree upon divisions of joint rates, which rates are admitted to be reasonable, will not be accepted as justification for an increase. There is, therefore, nothing before the Commission by way of justification for the increases here proposed. If the carriers interested, at the end of 60 days from the date of the order herein, are still unable to agree upon divisions, this Commission will, upon petition, prescribe same in accordance with the act.

An order will be issued in accordance herewith.

23 I. C. C.

**INVESTIGATION AND SUSPENSION DOCKET No. 244.**  
**NEW YORK BUTTER AND CHEESE RATES.**

*Submitted July 28, 1913. Decided October 14, 1913.*

Proposed increase not found to be justified by bookkeeping loss and carrier's desire to replace commodity rates with class rates.

*John W. Jones* for Beardslee Cooperative Creamery Company.  
*Douglas Swift* for Delaware, Lackawanna & Western Railroad Company.

**REPORT OF THE COMMISSION.**

**MARBLE, Commissioner:**

The Delaware, Lackawanna & Western Railroad Company (hereinafter referred to as the Lackawanna), by tariff supplements filed to become effective April 1, 1913, increased its rates for the transportation of butter and cheese (any quantity) to New York City, from points on its Cincinnatus branch, from 28 cents and 30 cents per 100 pounds to 29 cents and 35 cents per 100 pounds, respectively. The Cincinnatus branch extends from Cortland Junction, N. Y., to Cincinnatus, a distance of about 19 miles. The line of the Lackawanna from all these points to New York City passes through the states of Pennsylvania and New Jersey. Interested shippers protested against these increases and they were suspended by the Commission's order of March 28, 1913.

At the hearing the Lackawanna, by testimony of its general freight agent and its assistant superintendent, offered in justification of these increases the following: That the present rates are commodity rates applicable to any quantity, while generally, not only on the Lackawanna, but throughout official classification territory, rates on those commodities are third and second class, respectively; that the Cincinnatus branch was purchased by the Lackawanna from the Erie & Central New York Railroad Company in 1903; that the Lackawanna was obliged to practically rebuild the property at an expense of about \$100,000; and that its operation has resulted in annual deficits.

In proof of these contentions the Lackawanna offered a statement of the financial results of operation of the Cincinnatus branch.

The freight revenue in such accounts was compiled by allowing to the branch a division of all rates upon an arbitrarily allotted basis of 40 miles. The operating expenses shown on this statement indicate that during the first few years of the Lackawanna's ownership of the property it expended for maintenance of way and structures on this branch something like \$100,000 above the normal expense for maintenance of way and structures of later years. The general freight agent explained that the policy of the Lackawanna has been to charge betterments as operating expenses.

On behalf of the protestants there was evidence that the Erie & Central New York Railroad, as a separately operated property, had connections with the Lehigh Valley Railroad as well as with the Lackawanna; that rates at the time of such separate operation were lower than at present, the rate upon butter having been 24 cents per 100 pounds for the same service for which the Lackawanna now proposes to charge 35 cents; that manufacturers of butter on the Cincinnati branch are in competition with shippers whose rates are unchanged; and that, inasmuch as butter prices fluctuate in one-quarter cent margins, the effect of the proposed increase will be to put protestants under a disadvantage of one-quarter cent per pound in the New York market. It was further claimed that the Lackawanna took over the Cincinnati branch as a feeder, the former joint rates over the Erie & Central New York Railroad and the Lehigh Valley Railroad being canceled.

The annual reports of the Lackawanna, on file with this Commission, show that that carrier earned and paid substantial dividends in the years in which it charged into its operating expenses the sums spent for Cincinnati branch betterments. Furthermore, its purchase and rehabilitation of that property occurred several years before it was found necessary to rely thereon to justify rate increases. There is in the record no information as to why the Lackawanna purchased and at such expense rehabilitated what it now claims to be a losing venture, unless it be protestants' suggestion that the Cincinnati branch develops profitable business for the main line for which it does not receive proper credit under the allotment of revenue adopted. The present rates have been in force for 10 years. They are an increase over the rates in effect when this branch was purchased by the Lackawanna. The showing made by way of justification for the proposed further increase consists of the bookkeeping loss above described and of the statement of a desire to replace commodity rates with class rates. The Commission is not persuaded that the increase has been justified.

In accordance with these conclusions an order requiring the existing rates to be maintained for two years will be entered.



No. 4262.

IN THE MATTER OF THE INVESTIGATION OF ALLEGED  
UNREASONABLE RATES AND PRACTICES INVOLVED  
IN THE TRANSPORTATION OF LIVE STOCK, PACKING-  
HOUSE PRODUCTS, AND FRESH MEATS FROM VARI-  
OUS SOUTHWESTERN POINTS TO PACKING HOUSES,  
AND THENCE TO VARIOUS DESTINATIONS.

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No. 4004.

CORPORATION COMMISSION OF OKLAHOMA  
v.  
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted October 8, 1913. Decided October 14, 1913.*

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Following the conclusions reached in *Wool Investigation*, 25 I. C. C. 675,  
reparation to be awarded from date of promulgation of original opinion,  
subject to two-year limitation from date of filing petitions for same.

*Luther M. Walter* for Morris & Company and Sulzburger & Sons  
Company.

*James C. Jeffery* for Armour & Company and Swift & Company.

*A. H. and H. Veeder* and *L. C. Ehle* for Swift & Company.

*Alfred R. Union* and *C. J. Faulkner, jr.*, for Armour & Com-  
pany.

*Thompson & Barwise* for Fort Worth, Tex.

*J. A. McNaughton* and *C. O. Cornwell* for Cudahy Packing Com-  
pany.

*Cassoday, Butler, Lamb & Foster*, *J. A. McNaughton*, and *C. O. Cornwell* for Cudahy Packing Company and Live Stock Shippers at  
Wichita.

*A. W. McLaren*, *E. W. Skipworth*, and *Luther M. Walter* for  
Oklahoma City Packing House and Live Stock Interests.

*Martin L. Clardy*, *Henry G. Herbel*, and *Fred G. Wright* for Mis-  
souri Pacific Railway Company and St. Louis, Iron Mountain &  
Southern Railway Company.

*Henry G. Herbel* and *Fred G. Wright* for Texas & Pacific Railway  
Company and Great Northern Railway Company.

*Robert Dunlap* and *T. J. Norton* for Atchison, Topeka & Santa  
Fe Railway Company.

*W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company.

*C. S. Burg* for Missouri, Kansas & Texas Railway Company.

*F. H. Wood* for St. Louis & San Francisco Railroad Company.

*James L. Coleman* for defendants.

#### SUPPLEMENTAL REPORT OF THE COMMISSION.

##### *PROUTY, Commissioner:*

The Commission, by its report in this proceeding of December 11, 1911, found certain rates upon live stock, fresh meats, and packing-house products to be reasonable between points in Texas, Oklahoma, and other territory named in the report, 22 I. C. C., 160, and recommended that these rates be established.

Subsequently, on May 13, 1912, after further hearing upon objections by various interested parties, these rates, with certain slight modifications, were confirmed. 23 I. C. C., 656.

Until some few years ago cattle produced in Texas and Oklahoma were, for the most part, either shipped to slaughtering markets upon the Missouri River and east or to feeding grounds, to be fattened for subsequent marketing. But few animals were slaughtered in these states. Even the fresh meats and packing-house products consumed were shipped in from packing houses at the north. After a time, however, packing houses were located at Fort Worth, Tex., and still later at Oklahoma City, Okla. This changed conditions as to the shipment of live stock and its products in the Southwest. An intense rivalry grew up between points of production, principally Fort Worth and Oklahoma City, and to some extent Wichita, Kans., both as to the rate upon the live animal into the slaughtering point and that upon the product out. Lines serving these various localities became involved in a bitter contest over these rates, and the whole situation was in great confusion. The Commission, of its own motion, had instituted three orders of suspension covering these rates and the Corporation Commission of Oklahoma had filed a comprehensive complaint against rates to and from Oklahoma City when the general investigation docketed under No. 4262 was instituted.

By its opinion of December 11, 1911, a scheme of rates was prescribed which was radically different not only in amount but also in principle of construction and application from those formerly in effect. Neither shippers nor carriers were satisfied with these rates, and under leave of the Commission numerous objections were filed by both parties and a further hearing had. By a supplemental report of May 13, 1912, the rates previously established were adhered to, with slight modifications.

A considerable delay ensued in the filing of tariffs establishing the rates prescribed by the Commission. While the carriers stated upon the hearing that they would accept whatever conclusion the Commission reached, and while they may have attempted to do so in good faith, still the situation was involved and considerable time was necessarily required, with the result that it was several months before the rates found reasonable by the Commission were actually applied. In consequence of this shippers began to file claims for reparation with the Commission, and on April 7, 1913, in consequence of the filing of these claims and in order that some general conclusion might be reached in the matter, an order was issued in these cases permitting all persons interested in the question of reparation, either as complainants or defendants, to file with the Commission, on or before June 1, briefs upon that subject. The parties were also required to state whether or not oral argument was desired.

Such briefs were filed both by complainants and defendants. A request for oral argument was made and such oral argument has been heard.

The question is, Shall reparation be allowed; and if so, from what date? This question has already been virtually answered by the Commission in what is known as the *Wool Investigation*, 25 I. C. C., 675. That proceeding, like the one before us, was a general investigation growing out of the making of numerous complaints and the bringing of several petitions putting in issue the reasonableness of rates on wool from the intermountain country to eastern markets. After a protracted investigation the Commission held that rates should be established upon an entirely new basis. The system of constructing the rates was itself changed, and there were important alterations in the minimum carload prescribed. Claim for reparation had been made in at least one of the complaints which were consolidated into and heard with the general investigation, and other claims for reparation were also filed. We finally held in that case that shippers were entitled to reparation from and after the promulgation of the opinion of the Commission, and not until then.

Such must be the finding in the present case. These defendant carriers could not have been expected to establish voluntarily the rates found reasonable by this Commission. They could not have foreseen that rates of this kind even would be finally held lawful. Under the peculiar circumstances of this case we do not think the rates in effect should be declared unjust and unlawful until carriers were advised by the promulgation of the opinion of December 11, 1911, what reasonable rates in fact were. We fail to find from the evidence before us that up to that date the rates charged by the defendant carriers for the transportation of live stock, fresh meats, and packing-house

products were unreasonable or unlawful, but we do find that since then these rates have been unlawful in so far as they have exceeded and differed from the rates and relations found reasonable and lawful by the Commission in its opinion of that date, as modified by its subsequent opinion of May 13.

The carriers insist that they exercised all possible diligence in establishing these rates, and that they ought not to be required to pay reparation. The complainants urge, upon the other hand, that they did not exercise proper diligence, and point to some instances in which even to-day the rates suggested by the Commission have not been established. But all this is beside the question. We must hold that from the date of the promulgation of our opinion the rates therein suggested have been just and reasonable, with the slight modification subsequently made. The act entitles shippers to a just and reasonable transportation charge, and if these carriers have imposed upon these complainants rates in excess of this they have thereby damaged the complainants to that extent, for which reparation should be allowed.

It should be further noted that if the defendants repay these sums which they have improperly collected they are exactly as well off as though the tariffs had been established as of the date of our opinion.

Any party claiming reparation in a proceeding of this character may do so by the bringing of an independent and formal complaint, but the better practice, we think, is to file such claims in the original proceeding, which, when filed, will be treated as supplemental intervening petitions and will be proceeded with in such manner as to do justice between the parties. The filing of each claim is, in essence, an independent proceeding on the part of that complainant, and the statute of limitations must run from the date of the filing in each individual case.

Certain claims have been filed in detail with the Commission, but have not been served upon the defendants. In all cases a statement showing the claim in sufficient detail to enable the carrier to identify the shipments should be filed with the Commission and served upon those carriers from whom a recovery is asked. It is not necessary to make service upon other defendants. If the parties do not agree the Commission will proceed to the taking of testimony with a view to establishing the necessary facts upon which to base an award of damages.

Swift & Company and Armour & Company have each filed a petition asking for reparation. No detailed statement, by car, accompanies these petitions, but there is a general allegation showing the point of origin, the point of destination, etc. The defendants move to strike these petitions from the docket as not sufficiently precise.

In our opinion the allegations in these petitions are fairly within the rule laid down by this Commission in the *Mountain Ice case*, 21 I. C. C., 45, and constitute a filing with the Commission, as of the date of the filing of the petition, as to those claims fairly covered. No definite ruling can be made, however, until we have before us in detail the exact claims of these parties. They will therefore be required to file with this Commission, on or before January 1, 1914, with copies for service upon all defendants affected, a detailed statement showing, car by car, what recovery is claimed.

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No. 5350.

HAVERHILL BOX BOARD COMPANY

v.

BOSTON & ALBANY RAILROAD COMPANY ET AL.

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*Submitted July 28, 1913. Decided October 14, 1913.*

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Petition to establish between two points in same state a through route and joint rate via a circuitous interstate route, dismissed.

*Otto Gresham and Isaac Born* for complainant.

*Charles H. Blatchford* for Boston & Maine Railroad.

*S. S. Perry* for New York, New Haven & Hartford Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant operates a plant for the manufacture of box board at Bradford, which is within the switching limits of Haverhill, Mass. Box board is made from waste paper, and the complainant in the prosecution of its business gathers up this material at various points, among others at Boston. The product when manufactured is shipped to various points, including Boston.

While the Boston & Albany Railroad stands first in the list of the defendants, this proceeding is really directed against the Boston & Maine Railroad, which operates all lines between Boston and Haverhill. The rate, both upon scrap paper and box board, is 7 cents per 100 pounds, and the purpose of this proceeding is to secure a reduction of that rate.

The plant of the complainant is located 4 miles from the Boston & Maine freight yards at Haverhill, and this traffic is handled by switch movement from the plant to Haverhill. We may, for the purpose of this discussion, assume that the traffic originates at Haverhill, that being the billing station. The complainant asks us to establish a through route and through rate between Boston and Haverhill via Windham, N. H., for the movement of its traffic.

Haverhill lies nearly due north from Boston, and the distance by the direct line of the Boston & Maine Railroad is 33 miles. Traffic passing from Haverhill to Boston passes through South Lawrence but not through Lawrence.

It would be possible to move a car from Haverhill to Boston by taking it first to South Lawrence in a southerly direction, thence moving it in a northwesterly direction to Windham, thence in a southwesterly direction to Nashua, and thence in a southeasterly direction to Boston. The distance by this route is 68 miles.

When the car is at Windham, the short line to Boston would be back through Lawrence and so via South Lawrence over the same route which the car would take if shipped directly from Haverhill.

In the natural course of business a car would move from the plant of the complainant to Boston in one day, taking in Boston a second-day delivery. If the movement were via Windham, the car would be transferred to another train at Lawrence, taken on a local train to Windham, from Windham by a second local train to Nashua, and from Nashua to Boston on a through train. The time occupied in this detour would be four days, the normal delivery being on the morning of the fifth day.

The complainant was asked whether it desired to handle this traffic via Windham for any business reason, and replied in the negative. It was asked whether if a rate of 5 cents per 100 pounds, that being the rate for which it asked via Windham, were applied by the direct line, this would be satisfactory, and it replied in the affirmative. The reason for asking this route was frankly given. The movement by the direct line from Haverhill to Boston is a state movement, of which this Commission has no jurisdiction. Windham is in the state of New Hampshire and the movement via Windham would be an interstate movement, of which we might take cognizance. The complainant stated that the commission of Massachusetts had no power to reduce the rate from Haverhill, and that there was no other way in which it could obtain a reasonable transportation charge between these two points than by asking the Commission to establish an interstate route and a reasonable rate via Windham.

The preliminary and controlling question is, Should the Commission require the Boston & Maine Railroad to establish a route for the

handling of this business via Windham? and this question must be answered without hesitation in the negative. It would be against all rules of transportation economy to require the Boston & Maine Railroad to actually handle business by the way of Windham. It is the right of this complainant, if it elects, to ship its business to South Lawrence and thence to Windham and thence to Nashua and thence to Boston, but if it elects to do so it must pay the reasonable local rate between these points. There is no occasion for the establishment of a through rate, and to require carriers to have on file with this Commission tariffs for all possible combinations of this kind would be to impose an impossible burden. It is in the public interest as well as in the interest of the carriers that traffic should be handled by reasonably direct routes which can be operated at the least expense.

If the ownership of the line from Haverhill to Boston were by one company and the ownership of all lines west of South Lawrence were by another, still there would be no possible movement by the way of Windham. There might possibly be a rate and a route from Haverhill via South Lawrence and Lawrence to Boston, but this would not involve Windham and would still be a state movement.

We hold, under the circumstances of this case, that the Boston & Maine Railroad ought not to be required to establish a route and a rate for the movement of this traffic via Windham.

There is much in the testimony in this case to indicate, not perhaps that the rate of 7 cents, in view of the terminal services performed at Bradford and Boston, is too high, but that the complainant is discriminated against by the maintenance of rates from other points which are less in proportion to the service than is paid by the complainant. If this discrimination exists, it ought to be corrected, but not in the way pointed out by this complainant.

It may be observed that all these rates in New England, which are filled with inconsistencies and discriminations like those presented in this record, are in course of revision and that the disadvantage under which the complainant apparently rests may be removed by this process. Moreover, the state of Massachusetts has just created a public utilities commission, which has full authority to deal with the rate from Haverhill to Boston.

The complaint must be dismissed.

No. 4656.

COLUMBIA CHAMBER OF COMMERCE  
v.  
SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted June 3, 1913. Decided October 6, 1913.*

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Upon a complaint alleging that the rates from eastern and western points of origin unduly prefer Augusta, Ga., and thereby subject Columbia, S. C., to undue prejudice; it appearing that Augusta and Columbia are similarly located, so far as transportation by rail is concerned, inland from Savannah, Ga., and Charleston, S. C., and also with respect to competition with each other and with the ports named; and it further appearing that on traffic from the east the carriers recognize this similarity of rail situation by equalizing the class rates to these cities; *Held:*

1. That with respect to commodity rates from the east, and to class and commodity rates from Cincinnati, Ohio, Louisville, Ky., and Knoxville, Tenn., the differences in the rail locations of these two cities or in their competitive relationships to the ports are not sufficient to justify the present disparities in rates in favor of Augusta.
2. That the rates on specific commodities by rail, or by water-and-rail, from Baltimore, Md., and the east to Columbia should not exceed those contemporaneously maintained from the same points to Augusta.
3. That the rates on classes and on specific commodities from Cincinnati, from Louisville and from Knoxville should not exceed those contemporaneously maintained from the same places to Augusta.
4. That from the lower Ohio River and from Mississippi River crossings and from Nashville no change need be made in the present differentials over or under the rates from Cincinnati-Louisville to Augusta or to Columbia, as Columbia will derive all the relief in the rates from these gateways to which it is entitled by reason of location through the adjustment of the rates from Cincinnati-Louisville.

*R. B. Herbert, C. S. Monteith, and N. H. Edmunds* for complainant.  
*R. Walton Moore, Frank W. Gwathmey, and Charles D. Drayton* for Atlantic Coast Line Railroad Company, Seaboard Air Line Railway, and Southern Railway Company.

*Claudian B. Northrup and Alexander M. Bull* for Southern Railway Company.

*H. S. Kealhofer* for Chamber of Commerce of Augusta, Ga., intervener.



## REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

The single question presented for our consideration in this proceeding is: Do the carriers by their published rates from eastern and western points of origin give undue preference to Augusta, Ga., and thereby subject Columbia, S. C., to undue prejudice?

The original and amended petitions cover substantially all class and commodity rates from points on and north of the Potomac River, from points on and beyond the Ohio and Mississippi rivers, and from points from which the rates are made with relation to the rates from these gateways. Certain other points of origin not directly related to these gateways are also set forth. The complaint charged unreasonableness in these rates as well as undue disadvantage to Columbia; attacked the rates on coal from the mines in Alabama, Kentucky, and Tennessee; named Savannah, Ga., Charleston, S. C., and other southern cities as places to which the defendants give undue preference by some or all of their rates; and set forth violations of the fourth section of the act. These allegations were all waived or withdrawn during the hearings, excepting the charge that by their rates to Augusta and to Columbia the defendants subject the latter place to undue prejudice.

Columbia, the capital of South Carolina, is near the geographic center of that state. By way of the Congaree, a branch of the Santee River, it has water transportation from and to the coast at Georgetown. Its population, about 27,000, is served by four rail carriers engaged in commerce between the states. Augusta, at the head of navigation on the Savannah River, for more than 100 years has had boat service from and to the port of Savannah, and its population of 42,000 is further served by seven carriers of interstate commerce by rail. Both cities were trading centers before the advent of the railroad, inbound traffic moving by river or by overland trail from the ports. To-day both cities have large manufacturing plants and jobbing interests and are approximately at equal distances by rail from the coast. It is about 130 miles from Columbia to Charleston, or from Augusta to Savannah. It is 142 miles from Columbia to Savannah and 138 miles from Augusta to Charleston.

It would serve no useful purpose to follow all the illustrations of alleged disadvantage set forth by the complainant in this record. All long-distance rates from eastern as well as from western points to the destinations here involved may be shown substantially by the rates from a few pivotal points of origin, the rates from other points bearing established relations thereto. Neither is it necessary to set forth in detail the differences in the specific commodity rates to Columbia and to Augusta, the result of which, it is claimed, is unduly

to prefer the latter city. This is true because there is no question of the reasonableness of any of these rates, but only of the differences between the rates to the two cities, and the discriminations shown by the defendants in the published rates on specific commodities to Columbia and to Augusta either follow the general rate adjustments hereinafter discussed or arise from the fact that in transportation to Columbia certain articles move under the class rates ordinarily applicable throughout southern classification territory, whereas to Augusta specific commodity rates have been provided. Omitting, therefore, sporadic instances of rate irregularity the situation of which complaint is here made may be shown generally by the following tables:

## FROM THE EAST.

From Baltimore, Md., to—	Class.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
Columbia and/.....all rail..	101	85	74	61	49	39	31	44	34	33	46	59	65
Augusta.....water and rail..	89	75	65	53	43	34	26	39	29	28	40	51	55
Atlanta, Ga.....water and rail..	98	87	78	63	52	41	34	45	37	36	55	57	72
Charleston, S. C.....water and rail..	62	52	47	35	27	19	19	19	19	19	30	30	38
Savannah, Ga.....water and rail..	72	60	50	35	29	21	20	20	20	20	32	32	40

## FROM THE WEST.

From Cincinnati, Ohio, and Louisville, Ky., to—	Distance.		Class.											
	Cin- cinnati.	Lou- ville.	1	2	3	4	5	6	A	B	C	D	E	H F
	Miles.	Miles.												
Columbia, S. C.....	574	589	107	92	81	65	53	44	28	42	34	30	47	60 60
Augusta, Ga.....	647	609	103	90	81	65	54	43	28	38	30	26	50	50 52
Atlanta, Ga.....	474	452	98	87	78	63	52	41	28	36	28	24	48	48 48
Savannah, Ga.....	726	711	95	89	75	70	58	46	35	38	29	25	40	40 50
Charleston, S. C.....	713	598												

## FROM MEMPHIS, TENN., TO—

Columbia, S. C.....	658	115	100	87	71	57	46	28	44	32	28	50	64	56
Augusta, Ga.....	589	99	86	77	61	50	39	24	34	26	22	46	46	44
Atlanta, Ga.....	418	94	83	74	59	48	37	24	32	24	20	44	44	40
Savannah, Ga.....	684													
Charleston, S. C.....	728	91	76	71	66	54	42	31	34	25	21	36	36	42

## FROM KNOXVILLE, TENN., TO—

Columbia, S. C.....	293	80	68	57	49	41	32	22	29	26	23	40	47	52
Augusta, Ga.....	333	73	64	55	46	39	31	20	20	20	19	35	37	38
Atlanta, Ga.....	196	64	54	48	38	30	24	20	24	15	14	30	34	30
Savannah, Ga.....	435													
Charleston, S. C.....	422	72	60	57	53	44	35	27	28	22	18	30	30	36

It should be noted in connection with the rates from the east, illustrated by the table of rates from Baltimore, that the bulk of the traffic moves by water-and-rail, and that the equality shown in the

class rates to Columbia and to Augusta is not extended generally to rates on specific commodities.

Rates from western points of origin are shown above by the rates from the Ohio and Mississippi River crossings. From the upper crossings, Cincinnati and Louisville, the rates are equalized; and rates from the lower or more western gateways and from Nashville are made by addition thereto or subtraction therefrom of established differentials. The rates from Cincinnati-Louisville to Columbia and to Augusta, however, are not in all cases the same; are not made on the same bases; and the differentials applied thereto to make rates from the more western gateways and from Nashville are neither the same nor governed by the same considerations. Generally speaking, the rates from all the river crossings are constructed with reference to through transportation from more distant points of origin north, as from Chicago, and west, as from Kansas City. And the differentials applying to the various crossings on the Ohio and Mississippi rivers are the results of efforts made by the carriers to equalize the through rates from any particular point of origin, such as Omaha, Kansas City, St. Louis, or Chicago, via any reasonably direct or practicable gateway on either river. The class rates from or through the Ohio River gateways are, therefore, best stated by showing the rates from Cincinnati-Louisville and those from or through the Mississippi River gateways by showing the rates from Memphis. The rates from Knoxville, Tenn., are also shown as one of the matters of complaint and because not necessarily following changes in the rates from the gateways.

The distances noted in these tables are approximately correct for the shortest lines of rail between the points named, but do not attempt to measure the mileages by the routes ordinarily taken by traffic. While the distance between Columbia and Augusta is 83 miles, all traffic from the east does not pass through Columbia to Augusta nor does all traffic from the west move through Augusta to Columbia. In these tables the difference in the distances to Columbia and to Augusta nowhere appears as 83 miles, but always as somewhat less than that, and this is so because, while it is true that some traffic from the east or from the west does move through one of these cities to the other, the ordinary routing is via junctions closer to the points of origin.

The differences in rates to Augusta and to Columbia, indicated by these tables, illustrate what the complainant, speaking for the business interests of the latter city, says subject that place to undue prejudice and disadvantage. Columbia and Augusta, it is claimed, are similarly situated; both have river transportation from the coast; both are approximately at equal distances by rail from the ports of Charleston and Savannah; both are actively growing centers of dis-

tribution and of production; and, therefore, equal rates should be charged to both of these cities for transportation that is under substantially similar circumstances and conditions. To this the defendants answer that Augusta is on the eastern border of southeastern freight association territory, whereas Columbia is on the southern border of Carolina territory; that the rates to these territories are not made in the same way nor with primary reference to the same interior gateways; that it is unreasonable for Columbia to ask the carriers or the Commission to take it out of its own natural group and arbitrarily to place it in southeastern territory because it happens to be near thereto; that the rates to Columbia are not only reasonable but, because of its proximity to and competition with the ports, lower than otherwise they should be; and that while Columbia has some transportation by water the competition to be met in that direction by the rail carriers is not only slight in itself but, as compared with the water transportation to Augusta, almost negligible. The defendants further urge that long existing competitive conditions at Augusta have produced the rates to that place and that the conditions at Columbia, and in Carolina territory generally, do not warrant any such reduction of rates as would result from placing Columbia upon an equality in rates with Augusta. They urge that any reduction in the rates to Columbia would be reflected by reductions in the rates to places farther removed from the coast in Carolina territory and that such diminutions in their revenues as would result therefrom would be greater than they can afford.

What is known as Carolina territory embraces that part of eastern Tennessee east of, but not including, the line of the Southern Railway from Chattanooga, through Knoxville to Bristol; so much of Virginia as is south of, but not including, the line of the Norfolk & Western Railway from Bristol, through Roanoke, Lynchburg, Petersburg, and Suffolk to Norfolk; all of North Carolina, with the exception of a few stations in the extreme southwest and south; and all that part of South Carolina east and north of the Southern Railway from Walhalla, through Anderson, Belton, Greenwood, and Alston to Columbia, and north of the Atlantic Coast Line from Columbia, through Sumter and Florence to Wilmington. This southern boundary of Carolina territory is generally called the "Walhalla line," and, as has been noted, Columbia is immediately on and north of this line. South and west of Carolina territory proper is a territory sometimes known as Carolina territory south of the Walhalla line and sometimes as southeastern territory, Atlanta subdivision. This extends eastward of an imaginary line connecting Murphy, N. C., with Atlanta and north of the line of the Georgia Railroad from Atlanta to Augusta and north of the line of the Southern Railway from Augusta eastward through Blackville, Denmark, and Branch-

ville to Charleston. Southeastern territory for the purposes of this case may be described briefly as all that portion of Georgia west of an imaginary line from Murphy, N. C., to Atlanta, south of the Georgia Railroad from Atlanta to Augusta and that part of South Carolina south of the Southern Railway from Augusta to Charleston. It also embraces portions of northeastern Alabama and of eastern and southern Florida. Charleston, however, is for practically all purposes in southeastern territory proper.

It is not necessary in this report to enter into an extended exposition, either of the histories of these rate territories, or of the bases upon which through rates are made to points located therein; because, as it appears to us, the question here is not why or how the rates to Columbia and to Augusta differ, but whether the differences which exist in favor of Augusta are lawful. Assuming for the present that these territorial groupings are justified generally by geographic and commercial considerations, including therein distances from points of origin to points of destination as well as the competition between carriers for traffic and between markets for outlets and supplies; it still remains true, and to our mind the dominant fact in this case, that neither to Carolina nor to southeastern territory are rates made primarily upon considerations of mileage, but chiefly in view of the competitive forces focused at certain points where the paths of commerce and the routes of transportation meet. In saying this we do not ignore the facts that there are no basing points, properly so-called in Carolina territory, unless Columbia and perhaps the ports, be so treated, and that the basing-point system is of general application in southeastern territory; neither do we mean that in these territories the carriers pay no attention to mileage in making their rates; nor is it inferred that in their eagerness for traffic, or in their complaisance to the various markets, they make rates to competitive points that are not at least compensatory. But it would appear that the rates to both territories frequently decrease with the growth of competition even where it would seem they should increase in proportion to distance. To illustrate: The rates from Cincinnati-Louisville to Columbia and to Augusta are higher on classes 1, 2, 3, C, D, E, H, and F, and lower on classes 4, 5, 6, and A than the rates from the same points to Charleston and Savannah. And, taking Atlanta as one of the places in the south where competition is most intense, while the rates from Cincinnati-Louisville to the ports named are lower on classes 1, 2, 3, E, and H than to Atlanta, the rates on classes 4, 5, 6, A, B, C, D, and F are higher to the ports than to Atlanta. So that apparently it is true that while the carriers serving these territories have not lost sight of mileage in the adjustment of their scales of

rates to these points, particularly when the heavier commodities which move in large quantities are considered; nevertheless, their rates are constructed chiefly with reference to the competitions which converge at the points of distribution. The result is: Columbia and Augusta have rates from Cincinnati-Louisville on classes 1, 2, 3, C, D, H, and F higher than the rates to less distant Atlanta or than to the more distant ports; but neither Columbia nor Augusta has any of these class rates lower than the rate on the same class to Atlanta, although they both have some rates that are lower than to the ports, as pointed out above.

These comparisons of the class rates from Cincinnati-Louisville to Columbia and to Augusta with the rates from the same Ohio River crossings to Atlanta and to the ports do not always hold good with respect to the rates on specific commodities; Augusta, in many instances, having commodity rates from Cincinnati-Louisville lower than Atlanta. In such cases the departure from the general adjustment of rates to Atlanta and Augusta is apparently due to an effort to meet market competition from the east, and these exceptions follow and prove the broad rule indicated above: In southeastern and Carolina territories, provided mileage be not prohibitory, rates are made primarily in view of competitions, not mainly with respect to distances.

Now, the pertinence of the above comparison of the rates from Cincinnati-Louisville to Columbia and to Augusta is to be found in these facts: The carriers have recognized the similarity of the rail locations of these cities with reference to the ports by equalizing the class rates to Columbia and Augusta from Baltimore and the east; the reasonableness of the rates from the west is not in issue; these rates, apparently, are made primarily not with respect to distance, but with regard mainly to competitive conditions; and the rates to Columbia and to Augusta specified above, while bearing the relationships set forth, are equal only on classes 3, 4, and A.

The defendants proved that the carriers have not made their rates to Augusta as low as the all-water rates; that on some classes and commodities from Chicago to Augusta they do not make rates via Cincinnati-Louisville as low as via rail-water-and-rail; and that rates from the west to Augusta are made differentials over Atlanta or Savannah. The conclusion would seem to be that Augusta's location, as an intermediate and secondary point of distribution and consumption, has been fully recognized; whereas Columbia's similar location, with respect to distance by rail from the ports, has not been given the same degree of consideration; and that competition between rail carriers and water carriers has not reduced the rates by rail to Augusta below the point of reasonableness to the rail carriers.

With respect to the rates from Cincinnati-Louisville, the defendants further showed that the rate-making lines to Augusta are the Georgia Railroad and its western connections, the Georgia Railroad terminating at Augusta; that the delivering lines at Columbia, which also serve Augusta mediately or immediately, the Southern Railway and the Atlantic Coast Line, while they have a voice in making rates to Columbia, merely meet the rates to Augusta that are made by the western lines; that the first all-rail route to Columbia from the west was via Augusta; and that while Columbia, via the short line, now has a mileage somewhat less than Augusta, nevertheless, in a rate-making sense it is east of and beyond Augusta, and therefore, they say, Columbia should take a somewhat higher scale of rates. Historically this is quite true; it sets forth succinctly the early development of all-rail transportation from Cincinnati-Louisville to Augusta and to Columbia; and it is to be considered with the other claims of the defendants that at Augusta and at the ports there are competitions to be met that are not so potent at Columbia. But the force of this argument is weakened by the facts that the western lines, so called, terminate at Augusta; that southeastern territory extends in South Carolina south and east of Columbia; and that the rates from Cincinnati-Louisville to Charleston could not have been established and can not now be maintained without the concurrence of the Southern Railway and the Atlantic Coast Line.

Columbia as well as Augusta has competition to meet from Charleston and from Savannah, and its ability to meet this competition, as far as rates are concerned, is generally less than Augusta's on commodities from the east and on classes and commodities from Cincinnati-Louisville. This disadvantage the carriers have voluntarily corrected, in part, so far as class rates from the east are concerned, and it is difficult to understand why Columbia is not entitled to have its rail location with respect to the ports as fully recognized in all rates from the east, from Cincinnati, from Louisville and from Knoxville.

The defendants object, however, to taking Columbia out of Carolina territory and placing it in southeastern territory, which, they say, would result from granting to Columbia rates no higher than apply to Augusta. This would not follow of necessity. Rates to Columbia from Cincinnati-Louisville are now made substantially upon the Virginia cities combination or upon combinations on Paint Rock, Charleston, Augusta, or other gateways, whichever be lower. The complainant is interested not so much in the method of making these rates as in the ultimate results, and the rates on classes 5 and E, as well as on a few commodities, are now lower to Columbia than to Augusta. It follows therefore that no readjustment of territory need

be made if the Cincinnati-Louisville rates to Augusta be observed as the maxima, not as the bases, for the rates from the same points of origin to Columbia.

Water transportation, by the Santee and Congaree rivers between Georgetown and Columbia and by the Savannah River between Savannah and Augusta, was made the predominant feature of this record by all parties; the complainant contending that Columbia, by reason of the fact that it has recently had such transportation should be entitled to rates by rail as low as apply at Augusta; the defendants, with whom the intervener agreed, maintaining on the other hand, that the rate advantages of the latter city are due to the greater volume and longer existence of water transportation to that place. Transportation by river, however, was not the basis upon which class rates from the east were equalized to Columbia and Augusta; the real basis was the relatively equal rail distances of these cities from Charleston and Savannah, and it does not seem to us that the situation disclosed here can satisfactorily be answered by the respective amounts or durations of the water facilities of these two places. Briefly stated, the rail carriers have recognized the competitive force of water transportation at Augusta by lowering their rates whenever they thought they could afford so to do and have, apparently, left to the water carriers there certain other traffic because they have not believed they could make rates low enough to secure it. At Columbia, however, they have not seen fit to make any rates based solely upon the competition offered them by the water carrier on the Congaree River. It is not necessary here to decide whether this position be well taken or not, for as it appears to us the rail relationship of these two cities to the ports and to each other must determine the relative justice and equality of their rail rates from Cincinnati-Louisville as well as from the east; and Augusta and Columbia may still retain such particular advantages as they have by reason of their geographical locations, their industry, and thrift.

Certain irregularities in the rates from Washington, D. C., and from points related thereto, to Columbia and to Augusta were pointed out; we understand, however, that these disparities the carriers are willing to correct, and as the question here is not the amount of these rates but the relationship maintained by them between Columbia and Augusta, the carriers will be expected to cure these differences in the way that will best preserve the relative adjustment of rates from Washington and other eastern points.

The differences now existing in the rates on certain commodities from eastern points to Columbia and to Augusta were explained by the defendants as justified in view of the competition of water car-



riers at Augusta, or because these commodities move under class rates to Columbia, whereas to Augusta specific rates have been published. From Baltimore, or from other eastern points of origin from which the rates are made with relation thereto, Columbia is no farther distant, in most cases less distant, than Augusta; and without resting our finding upon distance it would seem that there is no substantial reason why Columbia should not have its rail relationship to the ports recognized with respect to the rates on specific commodities as well as upon the classes.

Throughout this report attention has been directed mainly to the rates from Cincinnati and from Louisville, because, as it seems to us, the relative locations of Columbia and Augusta with respect to these points of origin, to each other, and to Charleston and Savannah demand a readjustment of these rates; and because the rates from these gateways illustrate with substantial accuracy the entire system of rates from the west. All we have said about these class rates may be applied with equal force to the commodity rates to Columbia and Augusta from these upper Ohio River crossings. Rates from all points can not be made the same to Columbia as to Augusta, nor does the present record warrant such attempt. The rates to Columbia and to Augusta from the lower, or more western, crossings, from Nashville and from Memphis or other Mississippi River crossings, do not seem to require any further adjustment than will follow from the application of the present differentials over or under the rates from Cincinnati-Louisville. We say this because we find no reason in the present proceedings to take Columbia out of Carolina territory or to give it an undue advantage in that territory in rates from these more western points of origin. Columbia, and the same is true of Carolina territory generally, is in some respects more distant from these western river crossings than Augusta or southeastern territory; some lowering of these rates to Columbia will result from the adjustment here indicated from Cincinnati-Louisville; and a change in the present differentials would result in a redistribution of traffic through these crossings from far western points like Omaha, Kansas City, and St. Louis that would be wholly unjustified on the present record.

The defendants urge that many of the apparent disparities in rates to Augusta and to Columbia are due to the fact that rates to Atlanta are sometimes extended to Augusta under the established adjustments between those places without regard to whether traffic actually moves thereunder or not and that, in so far as these are "paper" rates, Columbia is not thereby prejudiced. They offer to establish reasonable and, as they regard them, nonprejudicial rates to Columbia whenever traffic may be expected to move. The complainant, however, regards the whole rate situation as subjecting it

and the city of Columbia to undue prejudice and disadvantage. To the extent indicated—that is, on all classes and commodities from Cincinnati-Louisville—we think the rates to Columbia should not be higher than the rates to Augusta; and we believe that Columbia will receive rates not unduly prejudicial to it from the more western river crossings if the rates from them be established not higher than the present Carolina differentials over or under the rates from Cincinnati-Louisville.

Knoxville is directly intermediate to Cincinnati-Louisville and Columbia-Augusta on at least one of the routes, and rates from Knoxville to Columbia should not exceed those contemporaneously maintained to Augusta.

Upon consideration of all the facts and circumstances shown herein, our conclusions are that commodity rates from Baltimore, Md., or from points from which the rates are made with relation thereto, to Columbia, S. C., which exceed those contemporaneously maintained from the same points to Augusta, Ga., all-rail or water-and-rail, unduly prefer Augusta and subject Columbia to undue prejudice and disadvantage; we further find that rates on classes and commodities from Cincinnati, Ohio, from Louisville, Ky., and from Knoxville, Tenn., to Columbia, S. C., which exceed those contemporaneously maintained from the same points to Augusta, Ga., unduly prefer Augusta and subject Columbia to undue prejudice and disadvantage; and we further find that rates from points from which the rates are made with relation to the rates from said Cincinnati and Louisville should hereafter be made by observing the existing Carolina differentials over or under said rates from said Cincinnati and Louisville to Columbia.

An order in accord herewith will be issued.

23 I. C. C.

No. 5409.  
AMERICAN BRAKE SHOE & FOUNDRY COMPANY  
v.  
BELT RAILWAY COMPANY OF CHATTANOOGA ET AL

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No. 5409 (Sub-No. 1).  
SAME  
v.  
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

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*Submitted June 9, 1913. Decided October 14, 1913.*

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Rule of carriers providing that where cars are switched to private scales for weighing a charge of 50 cents per car would be made unless weights so ascertained were used for the assessment of freight charges not found to be unlawful.

*O. L. Bunn* for complainant.

*R. Walton Moore* and *Frank W. Gwathmey* for defendants.

REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

The complainant operates an extensive plant near Chattanooga, Tenn., for the manufacture of brake shoes and perhaps other iron castings, and in the operation of this plant it ships out numerous car-loads of its product and ships in large quantities of raw material, principally scrap iron, pig iron, and coke.

This plant is connected with the outside railroad world by two lines of railway, the Nashville, Chattanooga & St. Louis Railway and the Belt Railway Company of Chattanooga in connection with the Alabama Great Southern Railroad. This proceeding consists really of two complaints, one directed against each of these lines of railway.

The time covered by this complaint is from January 1, 1911, to June 30, 1912. During that period both the defendants had on file with this Commission and in effect tariffs providing, in substance, that where cars were switched to private scales for weighing a charge of 50 cents per car would be made unless the weights so ascertained were used for the assessment of freight charges. The complainant

has, within the limits of its plant, private scales, and during this period a considerable number of cars were switched by both defendants to these scales for the purpose of being weighed. For this service 50 cents per car was collected. This the complainant asserts was an unlawful exaction, and it asks to recover about \$750 against each of the defendants on that account.

Some suggestion is made that this service, as rendered in case of the complainant, costs the defendants practically nothing, and that therefore no charge should be made; but this contention can not be sustained. While it is true that many of these cars which are weighed must pass over these track scales in the course of movement in and out of this plant, still, in case of such cars, they must be spotted in order to be properly weighed, and these cars, moreover, by no means constitute the whole nor indeed a majority of the cars placed upon these scales for weighing. In many instances there must be two independent movements, one to the scale and another from the scale when the car is weighed. We find that this charge is reasonable if the imposition of any charge is proper.

The cars on account of which these charges have been collected are inbound loaded cars, empty cars, and outbound loaded cars. Since the question is not precisely the same with respect to these different classes they may be considered separately.

#### OUTBOUND LOADED CARS.

As a rule carload freight is weighed at the point of origin, and such was the practice of these carriers at Chattanooga. The scales of the complainant were installed for its private use, but they are so constructed, as already suggested, that cars moving in and out of its plant can be more conveniently weighed upon these private scales than upon the track scales of the railroads at Chattanooga. It also appears that cars received from certain other shippers in that vicinity can be most conveniently weighed upon these scales. For this reason it was the practice of these defendants, previous to January 1, 1911, to weigh loaded outbound cars, both from the plant of the complainant and in some other instances, upon these private scales, and to use the weights so ascertained for billing purposes. The scales then and now were tested by these defendants under the direction of the Southern Weighing and Inspection Bureau, and were operated by the certified inspectors of that organization.

For some reason this method of weighing cars at Chattanooga, which seems to have been followed in other cases than with this complainant, was not satisfactory to the railroad companies, who determined to discontinue it and to confine the weighing of carload freight entirely to their own scales. A circular was therefore issued stating

that on and after January 1 all cars would be weighed upon railroad track scales at Chattanooga for the assessment of freight charges; that the practice of weighing cars upon private scales for railroad purposes would be discontinued, and that the charge for switching to private scales would, in all cases, be enforced. In accordance with this circular, beginning January 1, 1911, the cars of the complainant loaded with outbound freight were weighed upon railroad track scales at Chattanooga, and the weights so ascertained were used for the assessment of freight charges. While the testimony is not altogether clear, this is our understanding of it.

The practice so entered upon did not give satisfaction to shippers, who were able to finally influence certain railroads serving Chattanooga to absorb the 50-cent charge for placing upon private scales outbound loaded cars, which were afterwards transported over those lines. This in time led to an entire discontinuance of the practice, so that beginning June 30, 1912, no charges have been assessed on the loaded outbound cars.

There is some suggestion in the testimony that, as different lines began to absorb this charge, the defendants collected of the complainant in certain instances where they should have collected and perhaps did collect of their connections, but this does not appear with sufficient definiteness to permit a finding upon that point.

#### INBOUND AND EMPTY CARS.

Ordinarily the carload freight delivered into the plant of the complainant by the defendants is not weighed upon track scales at Chattanooga, the weights as ascertained at the point of origin and en route being accepted as correct for the assessment of freight charges. The complainant itself does, however, find it necessary or expedient in the conduct of its business to weigh all loaded inbound freight. In order to ascertain the correct weight either of outbound or inbound freight it is necessary, owing to the great deviation of the stenciled tare weight from the actual light weight of the car, to weigh the empty car before being loaded or after being unloaded, as well as the loaded car. In the conduct of its business, therefore, complainant causes these cars to be placed upon the scales both loaded and empty. It insists upon the correctness of the weight so ascertained with those from whom it purchases material and to whom it sells its product.

It is evident that the weighing of empty cars and the weighing of loaded inbound cars is for the benefit of the complainant. That advantage may be of two kinds: First, the accurate weight may be needed for the purpose of checking against the weight for which it is required to pay or against which it collects from those to whom it sells; and, second, it may use this weight for the purpose of correcting the weight upon which freight charges have been assessed.

It is evident that when the weight so ascertained is used for the purpose of adjusting accounts between the complainant and those with whom it deals, the service is for the benefit of the complainant and is one in which the defendants have no concern whatever. To that extent there is no reason why the railroad company should be required to render this service gratis for this complainant.

The complainant is entitled to insist upon the assessment of its freight charges on correct weights. The Commission expressed the opinion in the *Weighing Investigation*, 28 I. C. C., 7, that it should be the right of a shipper to demand a reweighing of his car, and that, if upon such reweighing it appeared that the weight as ascertained by the carrier was so far erroneous that it ought, within a fair measure of tolerance, to be corrected, no charge should be made by the railroad for the reweighing. Our opinion had reference to reweighing by the railroad itself, but would apply equally to a switch movement like that under consideration to the private scales of the complainant. We think exactly that rule ought to be applied here. If this reweighing, which is at the instance and for the benefit of the complainant, discloses no such error in the weighing as entitles it under the tariffs of the defendant on file to a correction in the transportation charges, then the complainant is properly required to pay 50 cents a car for the movement, but if the weighing develops such error that the complainant obtains or is entitled to a correction in his freight charges, then no charge should be made either for the movement of the empty car or the loaded car to the scale.

This case does not disclose any instance of that character; indeed, it was not tried upon that theory, the assumption being that either no charge should be made or that the charge should be made in every instance. We think that the complainant should be given opportunity to show whether or not any of these charges are such as entitle it to a refund. It may, therefore, within thirty days of the service of this report, file with the Commission a statement showing in detail the carloads on account of which, under this opinion, it claims a recovery, if any. If no such statement is filed, the complaint will be dismissed; otherwise it will be retained for further proceedings.

The record shows that under the tariffs of one of these defendants, on coke a tolerance of 1 per cent on the weight of the shipment, with a minimum of 500 pounds, is allowed, but that on all other commodities the tolerance is 2 per cent, with a minimum of 1,000 pounds. We have expressed in the *Weighing Investigation, supra*, the opinion that a tolerance of 500 pounds on coke and coal would perhaps be reasonable, but it is our impression that the tolerance on other commodities is much too great. It may be that some

articles could be found with respect to which as wide a measure of latitude should be allowed, but certainly that can not be true of all commodities. This matter is only referred to here for the purpose of indicating that no finding is made upon that point. The tariffs of the defendants in this respect are not attacked, and we do not think that we should condemn this rule of tolerance when drawn into the case in this collateral fashion. We assume, for the purpose of disposing of this complaint, that the regulation is a reasonable one.

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INVESTIGATION AND SUSPENSION DOCKET No. 239.  
IOWA GRAIN RATES.

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*Submitted September 11, 1913. Decided October 14, 1913.*

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Proposed increased rates on grain between stations on line of Chicago, Milwaukee & St. Paul Railway between Spencer and Manilla, Iowa, and intermediate stations not justified. Present rates just and reasonable.

*George T. Bell and J. H. Henderson* for Traffic Bureau of Sioux City Commercial Club.

*O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway.

REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

One division of the Chicago, Milwaukee & St. Paul Railway extends from Spencer, Iowa, west through Sheldon, Iowa, to Hudson, S. Dak., thence south to Sioux City, Iowa, and thence southeast to Manila, Iowa. Traffic between points upon this line in the state of Iowa north of Sioux City and points in South Dakota, upon the one hand, and Sioux City and points southeast of Sioux City, upon the other hand, is therefore interstate. The increases under suspension apply between Sheldon, Iowa, and Buck Grove, Iowa.

The rate upon wheat by this line from Spencer to Sioux City is 8.8 cents, and this was said to be the rate which would result from an application of the Iowa distance tariff. That rate is carried as a blanket as far west as Sheldon, at which point a rate of 7.9 is named, this again being the rate which would result from an application of the Iowa distance tariff to the distance from Sheldon to Sioux City.

This rate of 7.9 cents is carried as a blanket as far as Hawarden, 46 miles from Sioux City. From this point rates are gradually reduced, that from Elk Point being 6.5 cents for a distance of 21 miles.

It is proposed to leave the present rates from Elk Point to Chatsworth the same as at present, but to increase all rates north and west of Chatsworth, the rate from Spencer being 15 cents.

The Chicago, St. Paul, Minneapolis & Omaha is the short line between Sheldon and Sioux City and is entirely within the state of Iowa. The rate by that line is therefore made by the Iowa distance scale, and this produces from Sheldon and one or two stations east and west a somewhat lower rate than would be made by the application of the Iowa distance tariff to the line of the Chicago, Milwaukee & St. Paul. That company has constructed the rates which it proposes to put in effect by an application of what is known as the interstate distance tariff, which is materially higher than the Iowa distance tariff. It does not seek to meet at Sheldon or Spencer the rates of the short line, but chooses to abandon business at those points unless it can subsequently obtain leave from this Commission to disregard the fourth section. The only question presented for our consideration is whether the interstate distance tariff which the respondent railroad is attempting to apply by its tariff under suspension is a just and reasonable schedule.

In *Sioux City Terminal Elevator Co. v. C., M. & St. P. Ry. Co.*, 23 I. C. C., 98, the Commission held that grain rates from certain points in South Dakota to Sioux City were unreasonable. It did not in that proceeding at that time attempt to fix reasonable rates, but stated that it would do so unless the parties could themselves agree. To what extent the parties may have agreed we are not informed, but the Commission itself has never fixed reasonable rates in that proceeding.

The testimony in the present instance indicates that the rates which were condemned by the Commission in that case were constructed by applying the same interstate distance scale which it is sought to apply in this case. Upon a consideration of the whole record, we hold that the respondent has failed to justify these increases and that the present rates are just and reasonable. The respondent will therefore be ordered to maintain the present rates for a period of two years, but if before the expiration of that time the Commission determines that rates higher than those now in effect may be properly established upon these lines west of Sioux City, this order will be modified so as to permit the establishment of similar rates upon this line of the respondent.



No. 5195.  
RAILROAD COMMISSIONERS OF THE STATE OF  
FLORIDA  
v.  
ATLANTIC COAST LINE RAILROAD COMPANY ET AL

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No. 5195 (Sub-No. 1).  
SAME  
v.  
CALOOSAATCHEE RIVER STEAMBOAT LINE ET AL

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*Submitted October 8, 1913. Decided October 14, 1913.*

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Rates of 33 cents per box, carload, and 35 cents per box, less than carload, for the transportation of citrus fruits from landings on upper Caloosahatchee River in Florida to Jacksonville, Fla., when for beyond, found unreasonable to the extent that they exceed 31 cents, carload, and 34 cents, less than carload, which are prescribed as reasonable for the future.

*R. Hudson Burr, Newton A. Bitch, Royal C. Dunn, and F. M. Hudson* for complainant.

*R. Walton Moore and M. Carter Hall* for defendants.

REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

The complaint attacks rates upon both fruits and vegetables from landings upon the upper Caloosahatchee River to Jacksonville when for beyond, but only citrus fruits were referred to upon the hearing and only that commodity will be considered.

The defendants are the Atlantic Coast Line Railroad Company, which operates a line of railroad from Fort Myers to Jacksonville; and the Caloosahatchee River Steamboat line, an incorporated company operating a line of steamboats from points upon the upper Caloosahatchee River to Fort Myers. These defendants maintain joint rates of 33 cents, carload, and 35 cents, less than carload, from landings upon the upper Caloosahatchee River to Jacksonville when for shipment to interstate points beyond, and these are the rates under examination.

As the result of an extended investigation, this Commission prescribed certain mileage rates for the transportation of citrus fruits from points of origin upon the Atlantic Coast Line Railroad and certain other railroads in the state of Florida to Jacksonville and other base points when for interstate shipment beyond, and also established a relation between carload and less-than-carload shipments.

Previous to January 2, 1912, the rate on citrus fruits from Fort Myers to Jacksonville, had been 30 cents per box, any quantity, but on January 2, in consequence of the application of the mileage scale above referred to, that rate was reduced to 23 cents per box, carload, and 26 cents per box, less than carload. The rate from the river landings had been 35 cents when the rate from Fort Myers was 30 cents. A reduction was now made in the carload rate of 2 cents, resulting in 33 cents, carload, and 35 cents, less than carload, as already stated. The real complaint is that orange growers upon the upper Caloosahatchee River have not benefited by the reductions ordered by this Commission to the same extent as have those in the vicinity of Fort Myers.

The evidence of the complainant tended to show that producers of citrus fruits upon the upper river labored under many disadvantages not experienced by their competitors in the vicinity of Fort Myers, and from this it is argued that certainly as great a reduction should have been made in rates from this territory as from Fort Myers; in other words, it is claimed that the defendants should have maintained the same relation of rates which formerly existed and that the present rate should be reduced from 33 cents to 28 cents. But the purpose of the Commission in applying its mileage scale was not to make uniform reductions in all parts of the state. The object, and perhaps the principal object, was to remove inequalities which had previously existed. At some points no reduction whatever resulted, while at others the reduction was very considerable. The reduction at Fort Myers was one of the most considerable in all Florida, and it can not be assumed that the same reduction must be made to the complainant unless the relation which formerly existed was a proper one. We must inquire, therefore, not what the relation had been but rather what it should be.

The Caloosahatchee River Steamboat line is an incorporated company operating a line of steamboats from various landings upon the Caloosahatchee River to Fort Myers. It owns several freight and passenger boats, the total value of its equipment being placed at approximately \$40,000. This company is but recently incorporated, but its owners have for several years conducted this business, which has during that time greatly developed. Passengers and all kinds of

28 I. C. C.

freight are carried in both directions, but the great bulk of the traffic consists of the transportation of citrus fruits from points of production upon the upper river to Fort Myers and of the materials required for the maintenance of the citrus-fruit industry in the reverse direction. From 200,000 to 300,000 boxes of oranges are produced in territory tributary to this river, and the bulk of this production is handled by this steamboat line, which seems to have no serious competitor. This traffic moves in volume during about four months; for the remainder of the year the business of the company is extremely light.

Originally a division of 7 cents per box was allowed the steamboat company; but several years ago the Atlantic Coast Line, being convinced that the steamboat company could not live upon that division, increased the allowance to 9 cents per box. It does not appear exactly when this increase was made, but such had been the division for several years before the rate was reduced, in January, 1912, from 35 to 33 cents. At the time of the reduction no change was made in the division, the railroad company losing, therefore, the entire amount of the reduction.

The steamboat company gave evidence tending to show that it could not maintain itself upon a less division than 9 cents. The financial transactions of one year were introduced, and the testimony of the present manager, who had been the former owner, under whom the business has been built up, was given at considerable length. Without attempting to review this testimony, it is our impression that this steamboat line can not render an efficient service with a reasonable profit to itself upon a less compensation than 9 cents per box.

The question therefore is, Should the Atlantic Coast Line Railroad be required to accept less than it is now obtaining? When the rate from these river landings to Jacksonville was 35 cents and the division to the steamboat line 9 cents, the railroad received 26 cents for its service. At that time its local rate from Fort Myers was 30 cents, so that it was receiving 4 cents per box less on the business coming to it from its steamboat connection than it received upon business originating at Fort Myers. To-day the rate from the river crossings is 33 cents, carloads—and practically all this business moves in carloads—while from Fort Myers the local rate is 23 cents. The division being 9 cents, it follows that the railroad is now receiving 24 cents per box on business from the steamboat line as compared with 33 cents per box on business originating at Fort Myers.

In justification of its higher receipts on business from the boat line the railroad company states that it maintains certain wharves at Fort Myers for which a wharfage charge of  $1\frac{1}{2}$  cents per 100 pounds is made. The case shows nothing as to the manner in which

these wharves are used nor in which this particular traffic is handled over them. The use is the same to-day as it was before the reduction in the rate from Fort Myers.

This boat line, with respect to this traffic, stands to the Atlantic Coast Line much as would a branch railroad. This Commission has several times held that where traffic originates upon a branch line the main line should accept for its haul from the junction point something less than it receives upon business originating at the junction point. We think the same rule should be applied here. The Atlantic Coast Line can well afford and should be required to handle the great amount of business delivered to it at Fort Myers by its steamboat connection for something less than it charges for its strictly local business. Unless such a principle is applied in this and similar cases, branch lines can not be maintained without the imposition of extravagant charges. Taking the whole case so far as presented by this record it is our opinion that the defendant railroad company should accept 1 cent per box less for its service from Fort Myers, including the maintenance of the wharf over which the traffic is handled, than it receives upon business originating at that point. The local rate resulting from the mileage scale is 23 cents; its division of this through rate should therefore be 22 cents, and that, adding 9 cents for the service of the steamboat company, produces a rate from the river landings in question of 31 cents, carload, and 34 cents, less than carload.

It appeared in the course of the hearing that rates from Charlotte Bay, which is the lower part of the Caloosahatchee River and from which the distance is therefore less than from the upper landings in question, are but 30 cents per box, while the steamboat lines serving these landings are allowed a division of 10 cents. Upon this business, therefore, the Atlantic Coast Line is to-day receiving but 20 cents for its service from Fort Myers, including wharfage facilities.

Upon full consideration, we are of the opinion that the present rates are unreasonable and that these rates for the future should not exceed 31 cents, carload, and 34 cents, less than carload.

This proceeding originally included a complaint against the Atlantic Coast Line Railroad Company and the Sanford & Everglades Railroad Company with respect to certain joint rates made by those two carriers; but upon the hearing the complainants requested that this branch of the complaint be dismissed, which will be done.

Orders will be entered in accordance with the foregoing opinion.

23 I. C. C.

No. 5418.  
MERIDIAN BOARD OF TRADE & COTTON EXCHANGE  
v.  
ALABAMA GREAT SOUTHERN RAILROAD COMPANY  
ET AL.

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*Submitted June 21, 1913. Decided October 14, 1913.*

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The present adjustment of rates from Mobile and Tuscaloosa, Ala., to stations on the Tombigbee Valley and Alabama, Tennessee & Northern railroads not found to be discriminatory as against the rates from Meridian, Miss. Complaint dismissed.

*M. C. Moore* for complainant.

*R. Walton Moore, George Butler, and Charles F. Rixey* for defendants.

REPORT OF THE COMMISSION.

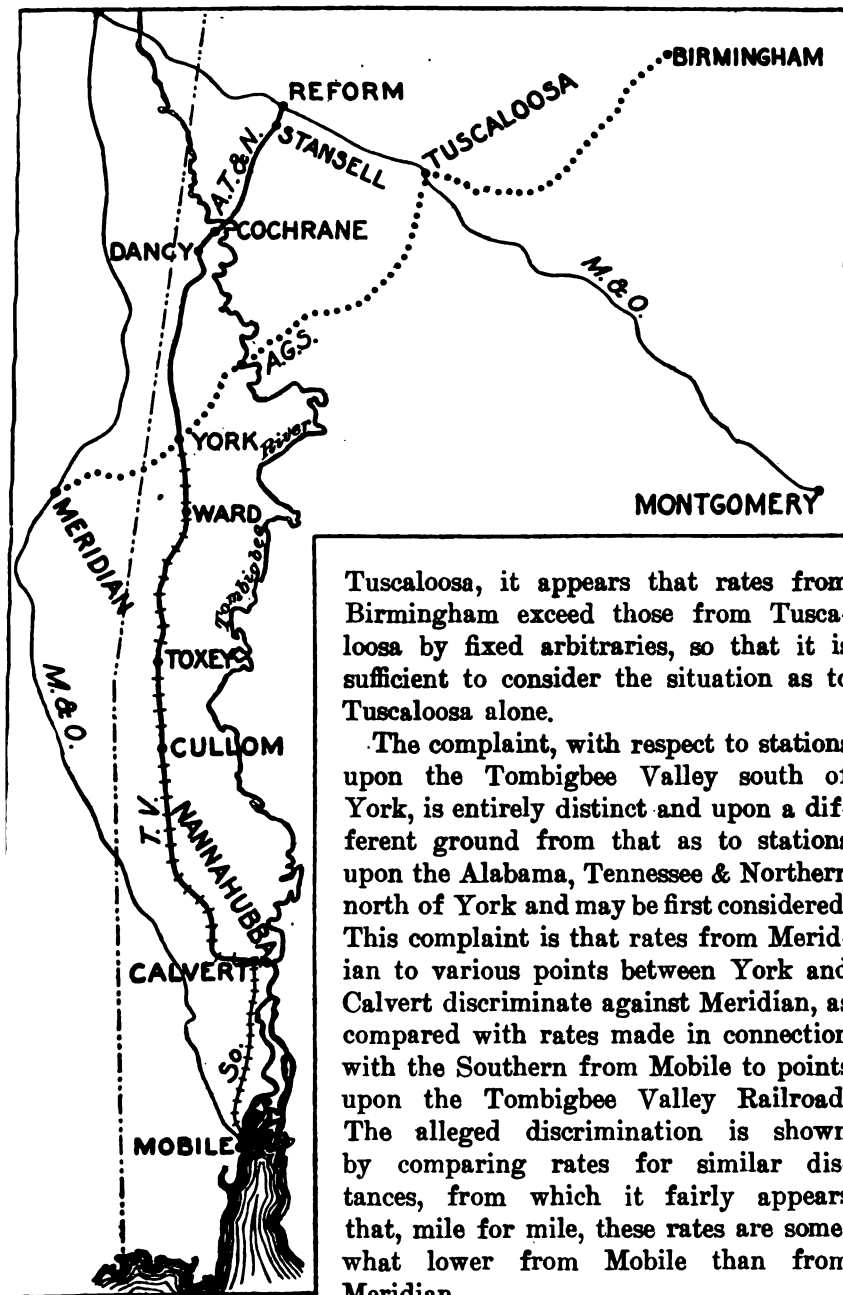
**PROUTY, Commissioner:**

This complaint alleges that the defendants Alabama Great Southern, Alabama, Tennessee & Northern, and Tombigbee Valley railroads have joined in publishing class and commodity rates from Meridian, Miss., to points on the Alabama, Tennessee & Northern and the Tombigbee Valley roads in Alabama which are unreasonable and which discriminate in favor of Birmingham, Tuscaloosa, and Mobile, Ala. While, however, the complaint alleges that these rates are unreasonable, the representative of the complainant stated upon the hearing that the real question was one of discrimination. No evidence was introduced bearing upon the inherent reasonableness of the rates, and that allegation in the complaint is not therefore considered.

The precise question presented will be best understood from an examination of the accompanying map. From this it will be seen that the Alabama, Tennessee & Northern Railroad extends south from Reform to York; the Tombigbee Valley runs south from York to Calvert, where it connects with the Southern Railway for Mobile; the Alabama Great Southern runs from Meridian through York to Tuscaloosa and thence to Birmingham.

The Alabama Great Southern makes joint rates with the Tombigbee Valley and the Alabama, Tennessee & Northern from both

Meridian and Tuscaloosa to points upon their lines. While the complaint alleges discrimination in favor of Birmingham as well as



Tuscaloosa, it appears that rates from Birmingham exceed those from Tuscaloosa by fixed arbitraries, so that it is sufficient to consider the situation as to Tuscaloosa alone.

The complaint, with respect to stations upon the Tombigbee Valley south of York, is entirely distinct and upon a different ground from that as to stations upon the Alabama, Tennessee & Northern north of York and may be first considered. This complaint is that rates from Meridian to various points between York and Calvert discriminate against Meridian, as compared with rates made in connection with the Southern from Mobile to points upon the Tombigbee Valley Railroad. The alleged discrimination is shown by comparing rates for similar distances, from which it fairly appears that, mile for mile, these rates are somewhat lower from Mobile than from Meridian.

In justification of this, however, the defendants stated that rates from Mobile were influenced by water transportation upon the Tombigbee Valley Railroad. 28 I. C. C.

bigbee River, which is not far distant from the line of the Tombigbee Valley Railroad. This statement was not denied by the representative of the complainant, who virtually conceded upon the hearing that if certain minor changes were made in these rates the resulting situation would be fairly satisfactory to the complainant. No further consideration need, therefore, be given to this branch of the complaint, which is not sustained.

The question most insisted upon by the complainant concerns rates between York and Reform. The complainant makes no question but that the rates of the Alabama Great Southern from Meridian to York are fairly related to the rates of that line from Tuscaloosa to York, nor does it complain of any rates between York and Dancy, but it is earnestly insisted that between Dancy and Reform there is a most grievous discrimination against Meridian.

The position of the complainant will be best shown by a statement of the rates themselves to a few of the points in controversy. Cobbs is the first station upon the Alabama, Tennessee & Northern directly north of York, and the first-class rate is 51 cents from Meridian as compared with 73 cents from Tuscaloosa, a difference of 22 cents in favor of Meridian. Dancy is 39 miles north of York, and here we find a first-class rate of 71 cents from Meridian and 74 cents from Tuscaloosa, a difference of 3 cents in favor of Meridian. Cochrane is 5 miles farther north, and here the rate from Meridian is 76 cents, while that from Tuscaloosa is 68 cents, the difference here being 8 cents in favor of Tuscaloosa. At Stansell, which is only a few miles south of Reform, the rate from Meridian is 86 cents, while that from Tuscaloosa is 47 cents, a difference of 39 cents in favor of Tuscaloosa. The business is in fact handled in all cases through York, and the complainant earnestly insists that the rate from Tuscaloosa should in no case be less than that from Meridian.

The reason for this rate structure, as stated by the defendants, is this: The Mobile & Ohio Railroad connects Tuscaloosa and Reform, the distance being 31 miles. Before the Alabama Great Southern was constructed business from Tuscaloosa to points upon the Alabama, Tennessee & Northern passed through Reform and thence south. Under the rates of the Alabama commission business may still move from Tuscaloosa to these points by that route, and if the business is handled by the Alabama Great Southern through York the rate maintained can not be higher than that which would be available under the state tariffs through Reform.

It is perfectly evident that, considering the much shorter distance from Tuscaloosa to Stansell than from Meridian to Stansell, the rate from Tuscaloosa ought to be lower than from Meridian; hence Tuscaloosa derives no undue advantage by the low rate which the Al-

bama Great Southern makes through York, nor is Meridian placed at any undue disadvantage. Manifestly the Alabama Great Southern can not handle this traffic through York unless it makes substantially the rates which shippers could obtain through Reform. Since the rate to Stansell is not a voluntary one, but is forced by the location of the points between which the traffic moves, it is not an act of undue discrimination upon the part of the defendants to maintain the lower rate from Tuscaloosa than from Meridian. Whether the cost of handling the business is *more* than the amount received, and whether this business is not, therefore, a burden upon that from Meridian, are matters not discussed upon the hearing and not considered here.

We are constrained, therefore, to hold against the contention of the complainant that rates from Dancy north from Meridian over the lines of the defendants should not exceed those from Tuscaloosa. The defendants announced that they would voluntarily make certain reductions from Meridian, and it is our impression that these rates ought to be revised and made somewhat lower, but there can be no serious complaint against the reasonableness of the rates themselves; that point was not pressed upon the hearing, and the complaint must therefore be dismissed.

28 I. C. C.



No. 5842.  
CLINTON SUGAR REFINING COMPANY  
v.  
CHICAGO & NORTH WESTERN RAILWAY COMPANY.

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*Submitted September 29, 1913. Decided October 14, 1913.*

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Under the tariffs of the defendant in force between May 3, 1910, and August 15, 1912, taken in connection with the requirements announced by this Commission touching the shipment of the products of grain milled in transit, the complainant is not entitled to a recovery on account of unused transit.

*J. A. O'Halloran* for complainant.

*C. C. Wright* and *Robert H. Widdicombe* for defendant.

REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

The complainant operates at Clinton, Iowa, an extensive plant for the manufacture of glucose and similar articles, at which large quantities of corn are consumed. The rate from the point where this corn is purchased by the complainant to Clinton, plus the rate on the product from Clinton, is generally more than the through rate via Clinton, and for the purpose of obtaining the benefit of this low through rate the complainant has in the past, and does still, transact its business upon a milling-in-transit basis.

Until August 15, 1912, the tariffs of the Chicago & North Western Railway Company required the complainant to bill this traffic from the point of origin to some point of destination, denominated a transit billing point, and to pay, when the corn moved into Clinton, the full rate from the station of origin to the billed destination. If, for example, the destination point named was St. Louis, then the entire rate from the point of origin through Clinton to St. Louis must be paid. When the product of the grain went on to St. Louis no further payment was required, the shipment being billed out on account of transit.

Corn when manufactured into glucose produces about 75 per cent glucose and 25 per cent of various by-products. There is a certain slight invisible loss, but the product is for the most part shipped in various kinds of containers and packages and, if the weight of the package be added, the total weight of the product out exceeds by 5 or 6 per cent the weight of the grain in.

Until May 3, 1910, it was the almost universal practice of carriers to check the shipment out against the shipment in without inquiring as to the character of the product shipped out. That is, if the complainant shipped in three carloads of corn billed to East St. Louis and one carload billed to Peoria, it might send out three carloads of glucose to St. Louis and one carload of by-product to Peoria; or it might send a carload of glucose to Peoria and the entire by-product to St. Louis. This Commission held *In the Matter of the Substitution of Tonnage at Transit Points*, 18 I. C. C., 280, that this was improper, that reference must in all cases be had to the character of the product shipped out, and that only those products could be checked against a particular shipment of grain which could have been manufactured from that grain; that is, if three carloads of corn were billed to St. Louis, it would not be proper to ship out three carloads of glucose, but only so much glucose and so much of each by-product could be sent forward on this transit as could be actually manufactured from the three carloads of corn. Since the market for the by-product was not usually the same as the market for the glucose, this interfered seriously with the exercise of the transit privilege by the complainant.

A recovery is sought in this case with respect to grain billed to three different transit points. By Exhibit A the complainant seeks to recover the sum of \$383.01 on account of 43 carloads of corn billed from various points in Iowa to East St. Louis for milling at Clinton, Iowa. These carloads all moved from point of origin in Iowa into Clinton between October 8, 1910, and November 1, 1910. They were all the shipments made during that period to East St. Louis as a transit destination, and the traffic manager of the complainant stated that according to his best recollection they were the only shipments ever made to that transit destination.

There was a market at East St. Louis for the glucose, but no market for the by-product, and the complainant shipped against this transit, under the ruling of the Commission as interpreted both by the complainant and by the defendant at that time, 75 per cent of the weight of these cars in glucose.

Nothing has ever been shipped against the remaining 25 per cent.

The position of the complainant is that he has paid the rate to East St. Louis upon 25 per cent of these shipments, although in fact to that extent the service has not been rendered. He seeks to recover exactly as though the shipments had been originally billed to St. Louis with the intent of making that the final destination, but afterwards this purpose had been changed and the destination made Clinton, Iowa, an intermediate point, as to 25 per cent.

The defendant suggested that subsequently and at the present time the complainant was permitted to ship out the product, ton

against ton, without inquiring as to what the character of that product was, and that it should have tendered to the defendant glucose for shipment against this transit, but during this period the complainant and the defendant both interpreted the opinion of the Commission as above stated and such was the fair interpretation of that opinion. The Commission has since somewhat changed its own conclusion upon that subject, but before this change was known to the complainant the period within which this tonnage was available for transit had expired.

By its Exhibit B the complainant undertakes to recover on account of 32 carloads of corn billed from various points in Iowa, through Clinton, to Peoria, Ill. This corn was all handled into Clinton and milled by the complainant at that point. The rate paid was in all cases that from the point of origin to Peoria. These shipments were made in May, June, and July, 1912. Nothing, either glucose or by-product, has ever been shipped out on their account.

By tariff effective August 15, 1912, the defendant changed its method of handling these shipments milled in transit. Under the new plan, which is the one generally in force, when the corn moves into Clinton simply the local rate is paid. If it subsequently moves out to some destination to which a through rate was in force from the point of origin via Clinton, then the rate out is so adjusted that the total rate paid will equal the through rate.

In checking up the outbound product against the inbound movement of grain it had been the custom of the parties to cancel the oldest billing first. The complainant stated that when the new regulation was put in force, instead of attempting to continue "out" shipments under the system which had been formerly in force, it began, as of August 15, to use for the out movement shipments upon which the local in rate had been paid, with the result that these 32 carloads had never been used for transit purposes. It follows therefore that the complainant has paid the rate from the point of origin to Peoria, although the defendant has only transported the traffic from the point of origin to Clinton. A recovery is sought in the sum of \$590.23, the difference between the amount actually paid by the complainant and the amount which would have been paid had these cars been billed to Clinton instead of Peoria and the rate paid accordingly.

By its Exhibit C the complainant undertakes to recover on account of a single carload of corn from Franklin Grove, Ill., to Sioux City, Iowa. This carload contained 61,960 pounds. There was subsequently shipped out to Sioux City, of glucose, 44,497 pounds, leaving 17,463 pounds of transit which has never been availed of by the

complainant. The complainant paid the rate from Franklin Grove to Sioux City upon the entire carload. The shipment moved October 13, 1910.

The defendant insists that the question presented is purely one of tariff construction. Has the complainant, upon the tariffs on file, been properly charged, or is there an overcharge which it is entitled to recover?

If this be the question the position of the defendant is manifestly correct. The tariff provided that the rate should be paid to the destination point and this was done. Assuming that the case falls within Conference Ruling 350, where we said that a shipment stopping short of the original destination point might be treated as though originally billed to the point where it stopped and refund made accordingly, still this tariff contains no such provision for such refund. We must hold, therefore, that upon the face of the tariff the defendant should have collected the rate it did and is not legally obliged to make refund of any portion of that rate.

But is the question one of mere tariff construction? Paragraphs 4, 5, and 6 of the complaint state that the charges collected and retained by the defendant are in excess of those published in its tariff. These paragraphs state merely a claim of overcharge. But paragraph 8 goes further. It shows:

That all the shipments received by petitioner and passing over the line of the respondent, as shown in Exhibits A, B, and C, were subject to unjust, unreasonable, and excessive rates, and that the charges collected, received, and retained by said respondent were based on through rates to transit destinations and whereas the shipments as shown in said exhibits were overcharged to the extent of the difference between the charges to Clinton and the charges to transit destination petitioner has been overcharged on said shipments in the amount of \$993.33, for which reparation is claimed.

This Commission never looks to the niceties of pleading. It inquires whether the complaint states the thing complained of with sufficient clearness so that the defendant can prepare intelligently its defense. This complaint states that the charges imposed by the defendant were unjust and unreasonable, for the reason that a charge was exacted to the destination point while the traffic only moved to the intermediate or milling point. There can be no room for question as to the precise thing of which the complainant is complaining. The mere fact that the word "overcharge" is used instead of "unreasonable exaction" ought not to be permitted to interfere with a trial of the substantial issue presented. We proceed, therefore, to a consideration of that question, which is, Did the defendant with respect to these shipments exact from the complainant unreasonable rates of transportation?

Ordinarily where milling in transit is permitted the full local rate is collected when the shipment moves into the milling point. If the product never moves out, or moves out in some direction to which no through rate exists, no further adjustment is required; but when the product moves to a destination point to which there existed a through rate from the point of origin via the milling point the subsequent freight charge from the milling point is so adjusted as to make the entire charge that from the point of origin to final destination, plus any milling-in-transit penalty which may be imposed. This is the system now in vogue at Clinton upon the lines of the defendant.

As already noted, however, at the time when these shipments moved a different system was in force. It has been thought by some carriers that in order to give to a shipment the quality of a through transaction the billing from the point of origin must be to some destination beyond the milling point; otherwise it would be a purely local shipment into the milling point which could never be converted legally into anything else. In this view or perhaps for some other reason, the North Western at the time of these shipments required that the traffic be billed, in order to enjoy the milling-in-transit rate, to some destination point beyond Clinton. As such destination, some point like St. Louis or Peoria or Chicago would be selected from which a reshipping rate was in force, so that the total rate arrived at by this method would be the total through rate from the originating station to the point of consumption. This method imposed no hardship upon the complainant so long as it was allowed to ship, ton against ton, without inquiring as to the character of the product, since its product, as shipped, including the weight of the package, somewhat exceeded the weight of the grain in. When, however, it was required to distinguish between the products and to ship on a particular transit the appropriate amount of each kind of product, difficulty was encountered, for the reason that the market for one product lay in one direction while that for the balance of the product lay in some other.

The record indicates that the only shipments ever made to St. Louis as a transit destination were the 43 embraced in Exhibit A. It is evident that if these carloads are to be checked, carload against carload, the claim of the defendant must be sustained. It has been seen that the St. Louis market took only the glucose, and that this was but 75 per cent of the total weight of the grain. If, therefore, a carload of corn weighing 60,000 pounds was shipped into Clinton, a carload of glucose weighing 45,000 pounds might be shipped out against this under the transit rate which had been paid, but the balance, 15,000 pounds, could not be shipped as a carload, and in point

of fact was not shipped in that direction. The complainant claims that, having paid a through rate on 60,000 pounds and having enjoyed a through shipment of but 45,000 pounds, it is entitled to a refund which will amount to applying the local charge on the 15,000 pounds which has not gone on to St. Louis, but this would give the complainant the benefit of the carload rate into Clinton upon a less-than-carload shipment, to wit, 15,000 pounds. It is apparent, therefore, that if the rule as then stated by the Commission and as accepted and applied by the parties is to be enforced, and if these shipments are to be checked, car against car, the complainant is entitled to no refund on account of those shipments with respect to which 75 per cent of the product has been sent on, which, as we understand the testimony, is true of all these carloads.

It seems however from the testimony that the practice of parties in keeping these transit accounts was not to check car against car but ton against ton. In other words, the complainant in shipping out its manufactured product was not compelled to confine itself to carloads of the same size or of the same number which moved in but might ship out a number of tons in the aggregate which corresponded to the "in" shipments. May it not therefore properly claim that of the tons actually shipped in only three-fourths have been shipped out, and that therefore it is entitled to recover with respect to the other one-fourth? Suppose the exact tariff rule in force to-day had been in force then. The complainant would have shipped in at the local rate all these 43 carloads, and it could have shipped out to St. Louis, at the balance of the through rate, 75 per cent of that tonnage. The complainant urges that the present rule is just and reasonable, that the former rule was unjust, and that if the present rule had been in effect it would have paid charges exactly the same as will result if this refund is allowed.

If this were true it could be urged with very great force that the original tariff rule should be condemned; and the present rule, which embodies the practice generally in vogue, held reasonable. But is it true that had the present transit system of the defendant then been in force the complainant could, under the rule of the Commission as to the shipment of the by-product, have accomplished the result which it seeks to produce by this refund?

The through rate from the point of origin to St. Louis is not in all cases determined by adding to the local rate up to Clinton the same arbitrary. Thus from Jordan to St. Louis the rate is 13.5 cents; to Clinton 9 cents, a difference of 4.5; from Sheldahl to St. Louis 13 cents, to Clinton 9 cents, difference 4 cents; from Calamus to St. Louis 11 cents, to Clinton 4.8 cents, difference 6.2 cents. It will be seen, therefore, that the value of the unused transit to the complainant

differs according to the point of origin. If four cars originating at the four points above named had been shipped into Clinton and three cars shipped out under the transit rate paid to St. Louis, the amount of the refund to which the complainant would be entitled would differ according as the fourth car was held to originate at either one of the four points named.

This simply means that the rule as laid down by the Commission, that where the balance of the through rate to different destinations is different regard must be had to the proportions in which different kinds of product are produced, can not be applied in this case except by checking car against car, or at least station against station. The complainant realizes the truth of this assertion and attempts to meet it by taking 25 per cent of each individual car and asking a refund with respect to that amount upon the basis of the rate from the particular station at which the carload originated. But this is merely a checking car against car, which, as we have seen, can not properly be done, since it gives to the less-than-carload shipment of the corn in, and in some cases of the product out, the carload rate.

It may be said that the application of this rule entirely destroys the practical benefit of the transit in the business of the complainant. This is to a considerable extent true, and it was for that reason that the Commission somewhat receded from the strict application of this rule, allowing carriers to file such transit regulations as might seem proper to them in the first instance. Under that permission the defendant now suffers the product to be shipped out against the grain, ton for ton, without inquiring as to the kind or destination of the product. No opinion is here expressed as to whether this is or is not proper, but when these shipments moved the rule of the Commission under which the parties were acting and under which the competitors of this complainant were presumably acting was otherwise, and if that rule be applied to the facts in this case the complainant is entitled to no refund on account of the shipments referred to in Exhibits A and C.

The same conclusion must be reached with respect to shipments embraced in Exhibit B. Here Peoria was the destination point. The practice of the parties seems to have been, in checking out shipments against transit billing, to cancel first the earlier billing without any reference to the point of origin. When the new rule of the defendant went into effect on August 15, 1912, requiring payment of the local rate in and a subsequent readjustment to the balance of a through rate when the product moved out, these cars had not been canceled. For some reason, not very clearly apparent, the complainant, instead of continuing to ship under the transit arrangement formerly in effect until the old shipments had been exhausted, began

as of August 15 to obtain the outward movement by an application of the inward billing at the local rate, thus leaving these carloads upon which the Peoria rate had been paid unaccounted for.

The rate to Peoria from the various points of origin named in this exhibit does not differ from that to Clinton by any fixed arbitrary. Thus from Calamus to Peoria the rate is 9.5 cents; to Clinton 4.8; from Blainstown to Peoria 9.5, to Clinton 7; from Stanwood to Peoria 9.5, to Clinton 5.4. Here, therefore, as in case of shipments to St. Louis the value of the balance of the unused transit from Clinton to Peoria differs according to the point of origin. If therefore the complainant is allowed to obtain a refund on the car originating at one point, while using to move out the product of this car the car which originated at some other point and moved into Clinton after August 15, 1912, it is evident that discrimination must result. Here, as in case of Exhibits A and C, when the balance of the through rate beyond Clinton varies with the point of origin, the rule of the Commission which the parties were then applying can not be enforced unless station be checked against station or car against car. The parties had apparently adopted a different rule in the checking of the outbound movement of the product, and if the complainant had insisted upon using up the balance of this transit within the time limit previously prescribed by the rule of the defendant we should perhaps feel justified in requiring a continuance upon the part of the defendant of that same system with respect to the balance of this unused transit. But the complainant made no attempt to avail itself of this transit and it does not appear that it was prevented by any act of the defendant from so doing. Under these circumstances we can not properly permit the complainant to obtain by means of this refund an advantage to which it is not entitled under the regulations then in effect.

We desire to repeat that the Commission subsequently modified its holding in this respect so that, had this situation arisen under the transit rules and practices in force either before these shipments were made or at the present time, the contention of the complainant with respect to the shipments embraced in Exhibits A and C should be sustained, but under the holding of the Commission in force at that time the refund can not be allowed. We must assume that the rule as then declared by us was observed in other localities and with respect to other shippers, and no exception should be made in favor of this complainant.

The complaint will be dismissed.

28 I. C. C.



INVESTIGATION AND SUSPENSION DOCKET No. 217.  
STORAGE CHARGES IN CENTRAL FREIGHT ASSOCIATION TERRITORY.

*Submitted October 25, 1913. Decided November 3, 1913.*

Proposed uniform storage rules and rates, filed by carriers in central freight association territory, found unreasonable in certain particulars, and in view of substantial increases permitted in storage charges on explosives and other dangerous articles, carriers required to notify consignors, in case request is properly made, of failure or refusal of consignees to remove shipments of such articles within the time prescribed.

*C. D. Chamberlin* and *W. E. MacEwen* for National Petroleum Association and Independent Petroleum Marketers' Association of the United States.

*W. F. Evans* for National Implement & Vehicle Association.

*J. L. Klammm* for National Varnish Manufacturers' Association.

*Frank L. Campbell* for John Lucas & Company, incorporated.

*H. B. Sale* for Hoffman Brothers Company and Indiana Hardwood Lumber Association.

*C. H. Barnaby* for National Hardwood Lumber Association.

*Henry A. Howard* and *Arthur H. Weed* for Manufacturing Chemists' Association of the United States.

*Edwin F. Sellers* for Paint Manufacturers' Association of the United States.

*W. E. MacEwen* for National Refining Company.

*James Stillwell* for Pennsylvania lines.

*N. S. Brown* for Wabash Railroad and receivers thereof.

*D. P. Connell* for New York Central lines.

*Archibald Fries* for Baltimore & Ohio Railroad, Baltimore & Ohio Southwestern Railroad, and Cincinnati, Hamilton & Dayton Railway.

REPORT OF THE COMMISSION.

*CLEMENTS, Commissioner:*

In this proceeding the operation of a number of tariffs filed to become effective February 1, 1913, has been suspended until November 29, 1913, pending investigation.

By these tariffs the carriers in central freight association territory propose to establish uniform charges for and rules governing the storage of freight.

The rules governing storage charges on explosives and other dangerous articles embrace most of the features of the code adopted and recommended by the American Railway Association for general use, subject to such changes as may be necessary to meet local conditions; they limit the free time to 24 hours after the first 7 a. m. following notice of arrival of shipments and provide for the doubling of the rates of storage on shipments not removed within 48 hours. This scale has been quite generally adopted in the south and west.

By these rules dangerous articles are divided into two classes: First, the more dangerous explosives, viz, black powder, high explosives, smokeless powder for small arms, wet fulminate of mercury, blasting caps, electric blasting caps, ammunition for cannon with explosive projectiles, explosive projectiles, and detonating fuses; and second, the relatively safe explosives and the dangerous articles other than explosives requiring red, yellow, white, or green labels under the regulations prescribed by the Commission. The rates of storage proposed for the first 24 hours after the expiration of free time are 25 cents per 100 pounds, minimum 50 cents, on the class first described, and 10 cents, minimum 25 cents, on the second. The storage charges on carload shipments of these respective classes placed on delivery tracks are \$5 and \$2 per day in addition to the regular demurrage charges.

The rules requiring the removal of explosives and other dangerous articles from carrier's property within 48 hours after notice of arrival at destination (general rules D and O of Regulations for the Transportation of Explosives and other Dangerous Articles by Freight and by Express) and governing the disposition of explosives not so removed, by return to the shipper, by storage at the expense of the owner, by sale, or, when necessary to safety, by destruction under the supervision of a competent person (paragraph 1672) are quoted in the suspended tariffs; and it is provided that when shipments of the more dangerous explosives are not removed within the time prescribed the most practicable of the steps authorized by paragraph 1672 must be taken.

No protest was received as to the proposed charges on either class of explosives, the protestants being interested in dangerous articles other than explosives, such as paints, varnishes, petroleum products, and chemicals, which are in general use and frequently shipped. It was asked that an exception be made on such of these articles as under the regulations prescribed by the Commission take red labels, it being claimed that but little danger attends their handling, and that, especially in the case of petroleum products, which are sold to farmers and small dealers located some distance from freight stations, it would be impossible in many cases for consignees to remove them

within the free time proposed. It was further claimed that the proposed rules would result in driving business from the smaller companies to the larger ones operating tank wagons.

Under the regulations a red label is required for "any liquid or liquid mixture that gives off inflammable vapors (as determined by flash point from Tagliabue's open-cup tester, as used for test of burning oils) at or below a temperature of 80° F." The 80° flash point is the dividing line between oil and naphthas and other petroleum products used for internal combustion. High-grade paints and varnishes, in which linseed oil is used for a drier, are not included in this group, but the cheaper grades, in which naphthas take the place of linseed oil, are included.

The respondents state that the proposed charges were published solely with a view to safety and were not based upon any computation of value of service plus cost of insurance, but were fixed, experimentally, sufficiently high to make effective the regulations requiring prompt removal of dangerous articles from carriers' premises, which they allege have not been effective owing to the absence of any penalty. While it is admitted by respondents that the articles taking the lower of the two storage rates are not equally dangerous to handle, it is contended that it would be impossible to establish storage charges based on the exact danger of each article without having a large number of grades and rates; that there is not much difference in fire risk between certain of the less dangerous explosives and certain of the dangerous articles other than explosives; and that petroleum products are being treated generously, as they are more dangerous than some of the other articles in the same group.

The protestants ask that there be incorporated into the storage tariffs provision for notification to the shipper and further notification to the consignee at the expiration of free time; also provision for return of the goods after expiration of the free time if requested by the shipper in the bill of lading or otherwise.

Upon consideration of the facts of record we are of opinion, and so find, that the proposed rules governing the more dangerous explosives are unreasonable in that they provide for the doubling of the storage charges after 24 hours following the expiration of the free time proposed; that those governing the less dangerous explosives and dangerous articles other than explosives are unreasonable in that they reduce the free time from 48 to 24 hours and provide for the doubling of the charges after 24 hours following the expiration of the free time.

It also seems to the Commission but reasonable that, in view of the amount and penal nature of the proposed charges, carriers should cooperate with shippers in avoiding the hardships that might result

from the operation of the rules, to the extent of notifying shippers, upon request properly made at the time of tendering shipment, of the failure or refusal of consignees to accept or remove shipments, and we are of opinion that the proposed rules governing explosives and other dangerous articles, even as modified above, would be unreasonable unless provision for such notification should be contained in the tariffs. Request for such notification, in order to avoid confusion or misunderstanding, should be plainly written on a rectangular piece of paper of different color from the label required under the Commission's regulations and placed on the package in close proximity to such label. Notice should be mailed unless shipper requests that it be sent by telegraph at his expense.

We are dealing here only with hazardous freight, on which increased storage charges in the nature of a penalty for failure to make prompt removal are permitted to become effective, and it is not to be inferred that the Commission expresses any opinion at this time upon the question of a similar rule applicable to other classes of freight.

The proposed charges for the storage of freight other than explosives and other dangerous articles, which are also involved in this proceeding, are one-half cent per 100 pounds per day, minimum on 500 pounds or under 15 cents, over 500 pounds to and including 1,000 pounds 20 cents, and over 1,000 pounds 25 cents, and are applicable on freight received for delivery or held for forwarding directions, if stored in or on railroad premises or, in the case of inbound freight, when not removed within the free time prescribed.

Heretofore there has been no uniformity of storage rules and rates in this territory, and uniformity, rather than increase of revenue, is stated as the reason for the proposed charges, which in some cases are increases and in others reductions. The only protests received as to any particular commodity were as to logs stored on the carriers' right of way, it being testified that these logs are purchased largely from farmers and hauled when teams can be spared from the regular farm work, and that it is often impossible to load a car within the free-time limit. The carriers submitted the following modification, whereupon these shippers withdrew their protests:

Except that logs, bolts, piling, and other forest products in the rough may be stored free, but entirely at owner's risk, on this company's right of way awaiting shipment, provided owners have previously secured permission from the proper officer of this company.

The proposed modification of the rule would apparently leave it in the discretion of some officer or agent whether or not logs could be stored. In order to conform to the requirements of the law and tariff regulations prescribed by the Commission with intent to prevent discrimination, it is necessary to make the exception more definite by

providing in substance that the agent of the carrier may designate, without distinction, space for the storage of these commodities, pending shipment thereof, to the extent that such space is available.

It probably will be impossible for the respondents to revise the storage rules and rates here under investigation in accordance with the conclusions of the Commission and republish them before the expiration of the final suspension of the tariffs carrying the same, but they will be expected to cancel the tariffs under suspension before they become effective and upon at least one day's notice. They may then make the necessary revision and republication.

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No. 5129.

CHARLES F. SCHMIDT & PETERS, INCORPORATED,  
*v.*  
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted May 30, 1913. Decided October 7, 1913.*

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Rate of \$2.25 per 100 pounds, any quantity, on champagne, from New York to California terminals, not found unreasonable. Complaint dismissed.

*Francis E. Hamilton* and *J. C. Lincoln* for complainant.

*James G. Wilson, T. J. Norton, N. H. Loomis, H. A. Scandrett,* and *C. W. Durbrow* for Southern Pacific Company; Southern Pacific Company-Atlantic Steamship Lines; Union Pacific Railroad Company; and Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation with principal office at New York, N. Y., engaged in the importation and sale of wines. By petition, filed August 30, 1912, it alleges that defendants' rate of \$2.25 per 100 pounds, any quantity, for the transportation of champagne from New York, N. Y., to California terminals is unreasonable and discriminatory. Complainant seeks an order establishing a carload rate of \$1.55, with a minimum of 30,000 pounds, and a less-than-carload rate of \$2, from New York to California terminals, and asks for reparation upon past shipments.

The allegation of discrimination was based upon the fact that formerly defendants maintained lower rates on champagne from California terminals to New York than in the reverse direction. Owing to the fact that defendants have advanced the rate from California to New York to equal the rate in the opposite direction, complainant abandoned its allegation of discrimination. The any-quantity rate of \$2.25 was also assailed on the ground that defendants maintain lower commodity rates on "liquors, n. o. s.," from New York to California terminals.

Prior to December 1, 1903, the rate on champagne from New York to California terminals was \$1.50 in carloads and \$2 less than carloads. On said date the carload rating was withdrawn, leaving in effect an any-quantity rate of \$2. Since January 1, 1909, the any-quantity rate has been \$2.25. In the reverse direction, from October, 1903, to September 19, 1912, there was a carload rate of \$1.55. The less-than-carload rate varied during said period from \$2 to \$3.70. On September 19, 1912, an eastbound any-quantity rate of \$2.25 was established.

The present rate on "liquors n. o. s.," which applies to liquors not specified in the commodity tariff from New York to California terminals, is \$1.25 in carloads and \$1.75 in less than carloads.

Ordinarily champagne is shipped in less than carloads. There is, however, a considerable movement in carloads in bond. Complainant's witness testified that about one-fifth of its tonnage to California points moved in carloads. It was stated that the American-Hawaiian Line maintains an any-quantity rate of \$1.50 from New York to San Francisco and Los Angeles, Cal., and rates of \$1 carload and \$1.50 less than carload from San Francisco to New York. Complainant asserts that the maintenance of the rate of \$2.25 westbound induces the movement of champagne by all-water routes from foreign countries to California, and that if the rate were reduced a considerably greater tonnage would be imported through New York and forwarded over the rail lines. The testimony is to the effect that complainant ships about 15,000 cases of champagne annually to Pacific coast points.

Defendants contend that the eastbound rates to New York were established many years ago to encourage the movement of California champagne to eastern points, and that they were made in competition with water carriers. It is further stated that the maintenance of relatively low rates eastbound failed to stimulate the movement in that direction; that defendant's records fail to disclose any appreciable movement of California champagne to eastern points, and that the traffic from California is practically confined to points west of the Rocky Mountains. It is further stated on behalf of defendants

that the market value of the California champagne is about one-third that of the imported champagne shipped from New York to California, and that the former eastbound rates were canceled because there had been no movement of traffic thereunder.

The western classification provides no carload rating on champagne, and, therefore, in the absence of a commodity rate it would be subject to the first-class rate of \$3.70 from New York to California. The any-quantity rate of \$2.25 is the same as the fourth-class rate. It is stated by defendants that \$2.25 is considered by them a reasonable carload rate, and that it was made applicable to the movement of champagne in any quantity because the water rates on this commodity were any-quantity rates.

The testimony indicates that a case of champagne, containing 12 quarts, weighs 70 pounds and is sold by complainant at about \$36. It will load about 375 cases to the car and the value of a carload would amount to approximately \$13,875. The evidence shows that the imported champagne comes, for the most part, from a restricted territory in France, where the climatic and other conditions are especially favorable to the production and ripening of the grapes from which this wine is made; that it is stable in price, seldom selling for less than \$35 per case, whereas the California champagne ordinarily does not sell for more than \$12 per case.

Complainant contends that under the rate on "liquors, n. o. s.," of \$1.25, carloads, and \$1.75, less than carloads, it is possible to ship many wines which exceed champagne in value. Defendant's testimony, however, is to the effect that while in some exceptional cases the rates on "liquors, n. o. s.," may be applicable to wines of greater value than champagne, the average value of the wine shipped under those rates does not exceed \$15 per case. They say that formerly they maintained rates dependent upon the value of the liquors shipped, but that such rates were withdrawn at the request of shippers who objected to showing the invoice value of their shipments upon the bills of lading.

Complainant insists that it is entitled to a carload rating less than the present any-quantity rate, and that there should be a reasonable difference between the carload and less-than-carload rate. In this connection they cite our decision in the *Western Classification case*, 25 I. C. C., 442-465, in which we stated that "assuming a proper relation between carload and less-than-carload rates, the establishment of carload ratings whenever carload quantities are offered, will, we believe, meet the needs of new and growing lines of industries without discrimination."

It is apparent, however, that there is no necessity for the establishment of a carload rate on champagne if the present any-quantity

rate of \$2.25 is a reasonable rate for the transportation of that commodity in carloads. As has been noted, that rate is the same as the fourth-class rate. Many important commodities which move in large volume, the average cost of which is much less than that of imported champagne, ordinarily are carried at fifth-class rates. This is the rating generally applied to the movement of groceries, beer, and iron and steel articles. In *Auto Vehicle Co. v. C., M. & St. P. Ry. Co.*, 21 I. C. C., 286, the Commission required the application of fourth-class rates to the transportation of metal automobile parts from Milwaukee, Wis., to Los Angeles, Cal.

Upon consideration of all the facts of record, we are unable to find that the present rate of \$2.25 is unreasonable for the transportation of carload quantities of champagne from New York to California terminals. It follows, of course, that our conclusion must be the same if that rate be considered also as a less-than-carload rate. Neither does the record indicate that complainant is subjected to undue prejudice or disadvantage within the meaning of section 3 of the act. The complaint must be dismissed, and it will be so ordered.

28 I. C. C.



No. 5838.  
ELGIN COMMERCIAL CLUB  
v.  
BOSTON & MAINE RAILROAD ET AL.

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No. 5838 (Sub-No. 1).

SAME  
v.  
PENNSYLVANIA COMPANY ET AL.

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*Submitted October 25, 1913. Decided November 4, 1913.*

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Class and commodity rates from trunk line and central freight association territories to Elgin, Ill., found to be unjustly discriminatory in so far as they exceed the rates contemporaneously maintained from the same points to Aurora, Ill.

*Frank A. Larish, James F. Dougherty, and Herman Mueller for complainant.*

*A. P. Burgwin, L. E. Hinkle, William W. Collin, jr., and Theodore Schmidt for Pennsylvania Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.*

*O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.*

*William W. Collin, jr., for New York Central lines.*

*J. L. Seager for Delaware, Lackawanna & Western Railroad Company.*

*C. C. Wright and R. H. Widdicombe for Chicago & North Western Railway Company.*

REPORT OF THE COMMISSION.

CLARK, *Chairman:*

Elgin, Ill., is located 36.6 miles west of Chicago, on the main line of the Chicago, Milwaukee & St. Paul Railway, and is also reached by the Chicago & North Western Railway. Aurora, Ill., is 37.4 miles west of Chicago on the main line of the Chicago, Burlington & Quincy Railroad, and is also reached by the Chicago & North Western and the Elgin, Joliet & Eastern railways. Aurora is about 20 miles south of Elgin.

The complaint alleges that the rates from trunk line and central freight association territories to Elgin are unreasonable, and that the

rate adjustments from these territories to Aurora and Elgin, respectively, unjustly discriminate against Elgin. The allegation that the rates are unreasonable was abandoned at the hearing.

From trunk line territory the Aurora rates are upon a basis of 104 per cent of the New York-Chicago rates; to Elgin, they are on a basis of 110 per cent. Batavia, St. Charles, and Geneva, towns located between Elgin and Aurora, are given the 104-per-cent basis. The manufacturers and dealers at Elgin are in keen competition with the manufacturers and dealers in Aurora as to inbound shipments from trunk line and central freight association territories, in dealing with nearby points, and in shipments to the west. Elgin and Aurora have the same local rates to and from Chicago and the same westbound rates to Mississippi River and Missouri River crossings and points beyond. Interurban roads connect Elgin and Aurora and bring the retailers in close competition in the rural districts and intermediate towns. The difference in freight rates to Elgin as compared with Aurora has operated to prevent the location of industries at Elgin. There is no substantial difference in distance, in the cost of the service, or in the handling of through shipments from points in the trunk line or central freight association territories to Elgin and to Aurora. As representative of the discrimination complained of, the class rates from New York to Chicago, Aurora, and Elgin, in cents per 100 pounds, are shown to be:

To—	1	2	3	4	5	6
Chicago.....	75	65	50	35	30	25
Aurora.....	78	68	52	36	31	26
Elgin.....	88	72	55	39	33	28

The discrimination seems more apparent in the rates from central freight association territory, as appears from the following rates on first class, in cents per 100 pounds.

To—	From—					
	Detroit.	Toledo.	Kalamazoo.	Grand Rapids.	Benton Harbor.	Dayton.
Chicago.....	37.0	37.0	30.0	33.0	24.0	38.5
Aurora.....	40.0	40.0	36.5	37.5	32.5	40.0
Elgin.....	43.0	43.0	43.0	43.0	43.0	43.0

None of defendants' witnesses was able at the hearing to give any explanation of why these variations existed in the rates from central freight association territory other than that they had been checked in that way. The explanation now offered is that the rates to Aurora

are a projection of the basis and method of computing the central freight association territory percentage scale, while the rates to Elgin are not based on the mileage scale but are built on what is called the Sycamore basis. None of defendants' witnesses was willing to express the opinion that rates to Elgin ought to be higher than to Aurora; some of them admitted that they should be the same but thought that Aurora should be on the same higher basis that applies to Elgin. The Chicago, Burlington & Quincy Railroad Company, which principally serves Aurora, entered no appearance at the hearing.

It was stated that the rates from the Ohio River to Aurora were affected by the fact that Aurora is intermediate to Chicago on the Elgin, Joliet & Eastern Railroad. It appears, however, that Aurora is not directly intermediate on this line, but is at the end of a branch line about 10 miles in length. The Elgin, Joliet & Eastern passes within three-quarters of a mile of Elgin.

The divisions of the rates are not all shown in the record, but in so far as they are shown, the western carriers receive substantially more out of the Elgin rates than out of the Aurora rates.

The 104-per-cent basis is carried by the Chicago & North Western to West Chicago, and it is admitted that there are no important points between West Chicago and Elgin that would be affected by a reduction of the Elgin rates to the same basis. Via the Chicago & North Western, Elgin is on a branch line which connects with the main line at West Chicago, and is about 12 miles from West Chicago.

Defendants participate in transportation to both Elgin and Aurora under joint through rates. There is no substantial difference in the circumstances and conditions existing at Elgin and Aurora or in the transportation of freight from points in trunk line and central freight association territories to those places. There is competition between the manufacturers and dealers at Elgin and those at Aurora both in the immediately surrounding territory and at points beyond. No reason is advanced why the rates to Elgin from any point in trunk line or central freight association territories should be higher than from the same point to Aurora.

We find that the present adjustment of rates unduly prefers Aurora and dealers thereat and unjustly discriminates against Elgin and dealers thereat. An order will be entered requiring defendants to establish and maintain class and commodity rates from points in trunk line and central freight association territories to Elgin no higher than they contemporaneously maintain from the same points of origin to Aurora.

No. 5708.

**BONEY & HARPER MILLING COMPANY**

*v.*

**ATLANTIC COAST LINE RAILROAD COMPANY ET AL.**

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*Submitted October 6, 1913. Decided November 4, 1913.*

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From Cincinnati, Ohio, and Louisville, Ky., to Wilmington, N. C., the Chesapeake & Ohio Railway and its connections maintain a rate on corn and its products of 20 cents per 100 pounds which is applicable to shipments having origin beyond, as well as to those originating at Cincinnati or Louisville. To Charleston, Savannah, Brunswick, and Jacksonville the same carriers participate in a rate of 23 cents per 100 pounds and a proportional rate 2 cents lower. On complaint that the rate to Wilmington is unjust and unreasonable and that the existing adjustment unduly discriminates against Wilmington and in favor of the other ports; *Held*, That the allegations of unreasonableness and undue discrimination are not sustained, and that the rates complained of are not shown to be otherwise in violation of law. Complaint dismissed.

*John B. Daish* for complainant.

*W. S. Bronson* for Chesapeake & Ohio Railway Company.

*R. Walton Moore, Charles J. Rizey, jr., and M. Carter Hall* for Atlantic Coast Line Railroad Company, Seaboard Air Line Railway, and Southern Railway Company.

**REPORT OF THE COMMISSION.**

**CLARK, Chairman:**

The adjustment of rates on corn and corn products from Ohio River crossings to Wilmington, N. C., as compared with the rates to Charleston, S. C., and other south Atlantic coast ports is attacked. The complaint in broad terms alleges that defendants' rates, charges, practices, and regulations with respect to the transportation of corn and corn products from Cincinnati and from Chicago and St. Louis to Wilmington are unreasonable and unjustly discriminatory, and that the present adjustment is unduly preferential to Charleston and ports south thereof. Violations of sections 1, 2, 3, 4, and 15 of the act are alleged. No testimony was adduced with respect to the alleged violation of section 4, and no discussion of that question will be undertaken.

On the hearing petitioner made it plain that its chief concern was with the rate from Cincinnati to Wilmington, and indicated that it would be satisfied with the establishment of a rate of 18 cents per 100

pounds to apply on traffic having its origin beyond, thus virtually disclaiming any dissatisfaction with the rate applicable on shipments originating at Cincinnati.

A brief statement of the rates will serve to illustrate the situation. From Cincinnati, Covington, and Louisville, hereinafter designated the upper crossings, to Wilmington the rate on corn and its products is 20 cents per 100 pounds, and this rate applies whether the traffic has local origin or comes from beyond. From the same crossings to Charleston, Savannah, Brunswick, and Jacksonville the local rate is 23 cents per 100 pounds, which rate is also applied from the crossings on corn originating beyond at points east of the Illinois-Indiana state line; at Chicago and Cook county, Ill., junctions, including South Chicago, Kankakee, Joliet, and Coster, Ill., or from beyond via those junctions; at Sioux City or Lemars, Iowa, or at local points on the Illinois Central Railroad west of Dubuque, Iowa; and at points in the states of Wisconsin, Minnesota, and South Dakota. On corn and products originating at points west of the Mississippi River or at points in Illinois, other than those above defined, a proportional or shrinkage rate of 21 cents applies.

From Cairo and Evansville, hereinafter referred to as the lower crossings, the rate to Wilmington is 22 cents, and that to Charleston, Savannah, Brunswick, and Jacksonville is 23 cents, regardless of point of origin.

It will thus be seen that on shipments from so-called shrinkage territory the rate from the upper crossings to the lower ports on the south Atlantic coast is 1 cent higher than that to Wilmington, while on shipments from other territory Wilmington has an advantage of 3 cents. In the same way Wilmington enjoys an advantage of 1 cent over Charleston, Savannah, Brunswick, and Jacksonville on traffic coming from or through the lower crossings. Petitioner conceives, however, that it is unlawful and unjust for the carriers to accord the lower south Atlantic ports a proportional rate from Cincinnati and not to make a similar distinction as to shipments from producing points beyond Cincinnati when destined to Wilmington. It asks, in other words, that its present advantage of 1 cent in connection with corn from shrinkage territory be increased to 3 cents, on the theory that the conditions which influence the maintenance of proportional rates lower than the local rates to the ports south thereof are just as strongly controlling at Wilmington.

Complainant buys and sells corn, manufacturing most of it into grits, cracked corn, chops, and foodstuffs. Its mill at Wilmington has a capacity of 3,000 bushels per day, and is the only mill at Wilmington or in that immediate vicinity. It buys corn in Virginia, at Chicago, at Portsmouth, Ohio, and at points as far west as Omaha

Its strongest competition in the sale of products is with mills in Ohio and Indiana, at Virginia cities, and at Spartanburg and Charleston, S. C. In the year 1907 petitioner handled 496,561 bushels of corn, of which 242,076 bushels was transit corn; that is, corn milled at Wilmington and reshipped on transit rates. In 1912 the total corn handled was 377,851 bushels, of which 152,240 bushels consisted of transit corn. From year to year there has been a steady decrease in the transit account, except that the year 1910 shows a slight increase over 1909. As to the total business, however, the intervening years indicate fluctuations in both directions, although never reaching the high-water mark of 1907. By far the greater portion of the loss is in transit corn. This loss may be attributable to causes outside of our jurisdiction, or which can not be reached in this proceeding since neither the milling-in-transit rates or regulations in force at Wilmington nor the reshipping rates from that point to destinations beyond are in issue.

Complainant's real dissatisfaction apparently is not merely in the rate to Wilmington, but in the total freight charges it is required to pay from points of production of the corn to the final destinations of the milled products. It is stated that petitioner is accorded transit privileges under which it can place its products in the territory lying between Wilmington and Charleston, including the latter; but the nature and scope of these privileges are not disclosed in the record. It is further stated that mills in Charleston have no milling-in-transit privilege, and can only place their products in the common territory between Wilmington and Charleston by the payment of local rates. Notwithstanding this, complainant contends that it is discriminated against in the existing adjustment, and that it can not successfully compete with the southern mills and lays claim to a readjustment which will enable it to draw corn to Wilmington, there mill and reship to Charleston, as a typical point, at the same rate that Charleston must pay to have corn laid down there.

The defendants cited in this action are the Chesapeake & Ohio Railway, Atlantic Coast Line Railroad, Southern Railway, and Seaboard Air Line Railway. The first named is initial at Cincinnati and Louisville and has through routes with the other defendants to Wilmington. None of the others are so situated; hence the situation dealt with concerns chiefly the Chesapeake & Ohio Railway route, although the rate-making routes are the short routes in connection with the Louisville & Nashville Railroad, and the Cincinnati, New Orleans & Texas Pacific Railway as initial carriers.

The scheme of equalization of grain rates through the Ohio River to the southeast has been discussed from so many angles and has had such full consideration in the past that it is well understood. The

key to the situation is found in the rates from Memphis, and the whole fabric is constructed with general relation to the Missouri River-Memphis rates to the southeast. To Charleston, for example, the rate on corn from Memphis is 19 cents, and to Memphis from Omaha, usually accepted as illustrative, on traffic from beyond the proportional rate is 14 cents, a total of 33 cents. The rate from Cairo and Evansville to Charleston is 23 cents, and the rate from Omaha to those gateways 10 cents, a total also of 33 cents. Going north, however, to Cincinnati and Louisville, we find the rate to the gateways to be 12 cents, and this added to the local rate of 23 cents from the gateways to Charleston makes 35 cents. The lines north having no reason to shrink their revenue to divert traffic to the upper crossings are allowed 12 cents, and the carriers from the upper crossings to Charleston shrink their rate to 21 cents, accomplishing this by the publication of a proportional rate to apply on traffic from defined territory beyond. To Wilmington the rate from Memphis is 18 cents; from Cairo and Evansville it is 22 cents; and from Cincinnati and Louisville 20 cents, so that the necessity for shrinkage in the same manner from the upper crossings does not exist. From Illinois shrinkage territory, taking Champaign as representative, the rate to the lower crossings is 7 cents and that to the upper crossings is 9 cents. The rate from both the lower and the upper crossings to Charleston is 23 cents, necessitating a shrinkage of 2 cents from the upper crossings, the same as on corn from Missouri River territory. To Wilmington the rates from the lower and upper crossings are 22 and 20 cents, respectively, resulting in a total rate of 29 cents in both cases. As to Illinois corn the impulse of the Memphis gateway rate is not felt to the same extent as is true in the case of Missouri River corn, the competition here being largely between the lower and upper crossings. It will be seen, however, that as to both of the territories of origin the total rates to Wilmington are 1 cent less than the total rates to the more southerly ports, and, as has been stated, from non-shrinkage territory the rates to Wilmington are 3 cents less.

The comparative distances from the several river crossings to the ports are relied upon to a considerable extent to support the allegation of unreasonableness. For example, via the lines of defendants the distances from Cincinnati are: To Wilmington, 844; to Charleston, 976; to Savannah, 1,090 miles. The rate to Wilmington is 20 cents and that to the other ports (proportional) 21 cents, and although the rates are made by the short routes, the distances via which are 748, 765, and 770 miles, respectively, it is argued that the Wilmington rate is relatively too high. On the other hand, the distance from Memphis to Wilmington is 849 miles and the rate 18 cents, while from Memphis to Savannah the distance is 685 miles and the rate

19 cents. From Evansville to Wilmington, 830 miles, the rate is 22 cents, as compared with a rate of 23 cents, Evansville to Savannah, 740 miles.

As has been said, a proportional rate is a part or remainder of a through rate, and as such must be taken in its relation to the whole rate, while in these comparisons no consideration is given to distances from points of origin to the crossings or gateways nor to the measure of the through rates from the points of origin to the destination ports.

The rates to Wilmington, defendants aver, are built with respect to strong and compelling competition through the north Atlantic ports, while the rates to the more southerly ports are the rates established by the short routes in connection with the Cincinnati, New Orleans & Texas Pacific Railway and the Louisville & Nashville Railroad in equalizing the rates through Evansville and Cairo, and necessarily applied by these defendants to their longer indirect routes in order to secure any of the business.

While not brought out at the hearing, reference is made in complainant's brief to the decreased spread between the rates to Wilmington and the rates to Charleston, Savannah, Brunswick, and Jacksonville, it being asserted that the difference was originally 3 cents, while as to corn from shrinkage territory it is now but 1 cent. The facts are, however, that formerly there was an 18-cent rate to Wilmington and a rate to Charleston of 21 cents, with a shrinkage of 2 cents from designated territories. The rates are now 20 cents and 23 cents, with the same shrinkage from designated territories, so that there is the same relative spread both as to shipments from Cincinnati and shipments from beyond.

Petitioner's case rests in part upon the Commission's decisions in *Rosenbaum Bros. v L. & N. R. R. Co.*, 22 I. C. C., 62, and *Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co.*, 26 I. C. C., 53. In the *Rosenbaum* case the application by the carriers of local rates from the upper crossings to southeastern points on grain from shrinkage territory west of the Mississippi River moving through Chicago or any Cook county junction point, while applying on grain from the same points of origin to the same destinations not moving through Chicago or a Cook county junction point, the lower shrinkage rates was found to result in unlawful discrimination against Chicago, Chicago shippers, and the lines forming the route through Chicago. In the *Indianapolis* case, *supra*, undue discrimination was found to result from the application of certain provisions of the carriers' tariffs leniently shrinkage or proportional rates south of the Ohio River on grain or grain products on which milling-in-transit privileges were accorded at points north of the Ohio River and east of the Illinois-Indiana state line, and it was stated that the Commission could see

23 I. C. C.



no reasonable or logical grounds upon which there might be denied to Indianapolis and other Indiana points the full use at the same aggregate through charge of the privileges accorded to all other points on the same route. In the instant case we are asked to find that the Cincinnati to Wilmington rate is unreasonable, whether considered as a local rate or as one applied to traffic from beyond, and that it is unjustly discriminatory for the defendants to maintain a proportional or shrinkage rate less than the local rate from the upper crossings to Charleston, Savannah, Brunswick, and Jacksonville and not to accord a similar shrinkage or proportional rate to Wilmington. The cases are clearly distinguishable, and neither the *Rosenbaum case* nor the *Indianapolis case, supra*, is controlling here.

We have frequently said that a proportional rate applying on through traffic might well be less than the corresponding local rate, but we have not said that such proportional rate must be, or in every case should be, less. There may be, and are, many instances in which full local rates are applied as proportions in the construction of through rates, and the rate so established in this case can only be condemned upon a satisfactory showing that it is unreasonable, unduly discriminatory, or otherwise in contravention of law.

Under the existing rule Wilmington can draw corn from points west of the Mississippi River and from Illinois points through the various crossings at the same through charge; its total rates from the points of production of the corn are lower than the through rates from such points to other south Atlantic coast ports with which comparisons are made, and it has lower rates from all of the river crossings. The evidence in this case affords no satisfactory basis for a determination of the inherent reasonableness of the Cincinnati to Wilmington rate, since it fails to touch upon any of the numerous elements ordinarily employed in such a test. Relative unreasonableness is not proven here by comparisons of distances, and nothing has been produced to convince us that the long-established equalization adjustment, which, in some respects at least, is well adapted to the prevailing conditions, should be disturbed because Wilmington has no shrinkage rate from the upper crossings.

Defendants resist the granting of any decree in favor of the petitioner on the ground that the petition is fatally defective because of nonjoinder of the carriers north of Cincinnati and Louisville, which are parties to the through route and rate. In the view which we take of the situation it is not necessary to discuss this question. The defendant carriers participate only in the rates from the river crossings to the ports. Had the carriers seen fit to adopt joint rates from Missouri River and Illinois points to the ports in lieu of the

method now in vogue, petitioner could be heard only in a proceeding attacking the through rates.

Complainant asserts that the restriction of territory beyond Cincinnati in the application of the shrinkage rates south of the river crossings is improper and unlawful. In *Serry v. Southern Pacific Co.*, 18 I. C. C., 554, it was held not unlawful *per se* to make a proportional rate lower than a local rate and limit its application to traffic coming from a specified territory. This record does not disclose impropriety in the limitations referred to.

The rates complained of are not found to be unreasonable, unduly discriminatory, or otherwise in violation of law.

The complaint must be dismissed.

28 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 233.  
CHICAGO LIGHTERAGE CHARGES.

*Submitted September 25, 1913. Decided November 4, 1913.*

Upon protests against the cancellation of provision for absorption by respondents of the charges of the Chicago River & Indiana Railroad Company for car-float deliveries in Chicago, such cancellations were suspended. Protestants either withdrew their protests or failed to appear at the hearing. It appearing that respondents can effect deliveries through other channels with less expense to themselves and without additional cost to the public, the order of suspension is vacated.

*G. W. Kretzinger, jr.*, for Grand Trunk Railway system.

*E. R. Newman* for Wabash Railroad and its receivers.

*F. G. Lantz* for Chicago & Erie Railroad Company.

*Frank B. Carpenter* and *H. D. Palmer* for New York, Chicago & St. Louis Railroad Company.

*Cassoday, Butler, Lamb & Foster* for Merchants Lighterage Company.

*Theodore Brent* for Chicago River & Indiana Railroad Company.

REPORT OF THE COMMISSION.

**CLARK, Chairman:**

For many years the lake boat lines serving Chicago have made deliveries at docks along their routes, unloading freight at their own expense. In the same manner lighterage companies, operating on the Chicago River what in this proceeding is termed "break-bulk service," have delivered freight on docks or in warehouses of consignees on the river without any additional charge for unloading. The Chicago River & Indiana Railroad, operating about 33 miles of track in the Chicago district, and performing a rail switching service in connection with practically every railroad entering Chicago, also operates a car float on the Chicago River.

The parties who own the Chicago River & Indiana Railroad also own the Chicago Lighterage Company of Illinois, which operates a steam lighter on the river, handling so-called break-bulk freight, both carloads and less than carloads. The Chicago River & Indiana Railroad and the Chicago Lighterage Company of Illinois are managed jointly, and the lighterage service is referred to throughout this record as that of the railroad.

When the Chicago River & Indiana Railroad inaugurated its car-float service in the winter of 1911-1912, a rate of 1 cent per 100 pounds, minimum 60,000 pounds per car, was established for transportation from a cradle at Twenty-seventh and Robey streets to its station at the Fulton street dock, the rate applying only on sugar in carloads. Subsequently the application of the rate was extended first to sirup, molasses, rice, and rosin, in carloads, and later to all freight, and the provision for deliveries was made to include, first, certain other designated docks and warehouses, and then all stations, docks, and industries on the Chicago River within the Chicago switching limits.

The lighter service was first established in the spring of 1912, when the Chicago Lighterage Company of Illinois, a corporation organized by the Chicago River & Indiana interests, bought the assets of the old Chicago Lighterage Company, then bankrupt. Shortly thereafter, or on July 28, 1912, a new tariff was issued by the Chicago River & Indiana, increasing its charge on all freight in carloads between cradles, stations, docks, and industries to 3 cents per 100 pounds, and establishing a rate of 5 cents per 100 pounds for less-than-carload freight. This tariff provided for transportation "by lighter or car float," and as to carload freight fixed no minimum weight. A reissue of this tariff, effective January 12, 1913, provided for the application of carload minima as published in the western and official classifications, and on April 3, 1913, the minimum as to all freight in carloads was changed to 10,000 pounds.

Under all of these tariffs deliveries were made as to both car-float and break-bulk lighter services without additional charge to shippers or consignees for unloading. The increased charge is not directly in issue in this proceeding.

Following the inauguration of the car-float service, and prior to the institution of the lighterage service, the Grand Trunk Railway system entered into an arrangement with the Chicago River & Indiana for the absorption of the latter's charge of 1 cent per 100 pounds, minimum 60,000 pounds, or, in other words, for the application of Chicago rates, subject to minimum earnings of \$15 per car, on all inbound carload freight from defined eastern territories when for specified industries served by the Chicago River & Indiana "car-float or lighterage facilities." Later a similar arrangement was made with the Chicago River & Indiana by the Chicago & Erie Railroad, the New York, Chicago & St. Louis Railroad, and the Wabash Railroad, to cover all inbound and outbound carload freight to or from all industries served by the Chicago River & Indiana "car-float or lighterage facilities." These arrangements were duly published in tariffs by L. A. Lowrey, as agent for the carriers.

Shortly after the increase in the charge of the Chicago River & Indiana from 1 cent to 3 cents per 100 pounds demand was made by the Chicago River & Indiana upon the Grand Trunk; Chicago & Erie; New York, Chicago & St. Louis; and Wabash roads, hereinafter designated respondents, for a corresponding increase in the amount of their absorptions. Respondents refused to yield to this demand, and, acting on their instructions, Agent Lowrey published a proposed cancellation of the application of Chicago rates in connection with the Chicago River & Indiana, and the application of combination rates instead. Upon protests against such cancellation, the Commission suspended the items in question and instituted this proceeding.

It will be seen that disagreement between the carriers over their divisions of the joint rates is the seat of the trouble, and that the question of paramount importance is the extent to which, if at all, the interests of the public may be adversely affected by the proposed cancellation.

Prior to the hearing one of the protests was withdrawn on the ground of disinterestedness, and at the hearing no protestant offered any testimony or entered an appearance. We may assume, therefore, that protestants are no longer concerned over the outcome.

Respondents aver that there is no intention of disturbing any existing arrangements covering break-bulk lighterage, and that the only effect of the cancellation will be to place them on an equal footing with the ten other east of Chicago roads competing with them, none of which makes Chicago River & Indiana deliveries to firms served exclusively by the Chicago River & Indiana car float, or absorbs the car-float charges. They state that the recognized allowance for break-bulk lighterage service in Chicago Harbor is three cents per 100 pounds, which amount is, and has been, paid to the old Chicago Lighterage Company as well as to the present company, and to its competitor, the Merchants Lighterage Company; that the car-float service is not a lighterage service, but is in effect a car-ferry service, substantially the same as rail switching service, for which rail carriers charge and are paid 1 cent per 100 pounds, minimum 60,000 pounds; that the payment of any greater charge to the Chicago River & Indiana would lead to a demand from the rail carriers for a like increase; and that the new charge is greater, considering their earnings, than they can afford to pay.

For its rail switching service from connecting rail carriers to its cradle, the Chicago River & Indiana receives \$3 per car. The total cost, therefore, for handling from connections with rail carriers to final delivery point by car float under the old rate was \$3 plus 1 cent per 100 pounds or \$6 per minimum car of 60,000 pounds. Under

the suspended schedule the rail carriers would be called upon to pay \$3 plus \$18 for a 60,000-pound car, or \$3 plus \$18.35 for an average car of 44,500 pounds.

According to respondents, the necessity for the increased charges made by the Chicago River & Indiana arises from the fact that the latter incurs improper and unauthorized expenses in unloading and placing freight for consignees, and grants storage and other transit privileges not contemplated by the tariffs of the line-haul carriers and not concurred in by them.

It appears that at the time respondents entered into the arrangement for absorption of the Chicago River & Indiana charge, that charge was 1 cent per 100 pounds, published to apply only to the transportation of sugar, and car-float service only was involved, since the Chicago River & Indiana did not then own or operate, either directly or through any affiliated organization, a lighter of any kind. The absorption bases as published in Lowrey's tariff referred to "C. R. & I. car-float or lighterage facilities," but that company's one means of water carriage at that time was by a car float pulled by tugs, and the words "or lighterage" may be regarded as surplusage. Corroborative of their contention as to the distinction between car-float service and lighterage service, respondents submit that the Chicago Lighterage Company of Illinois gives its individual power of attorney and concurrence to Agent Lowrey, is separately shown in the tariff as a participating carrier, and is separately provided for in rate basis 7 of said tariff, which names various eastern, western, and southwestern lines and states the rate arrangements these lines have with the lighterage company.

Respondent Wabash Railroad is a party to the rate basis of the lighterage company and will still have access to the lighterage company deliveries if the cancellation of its arrangement with the Chicago River & Indiana as to car-float service is approved. The other three respondents are not parties to the lighterage company basis, and will terminate all service in connection with the Chicago River & Indiana and the Chicago Lighterage Company if the cancellation is permitted. Firms and industries at the Chicago River & Indiana's Fulton street station are served exclusively by that company and the Chicago Lighterage Company, but it does not appear that there are any other docks or stations of either of these companies which are not also accessible by rail switching service or by lighterage service of the Merchants Lighterage Company. The firms and industries at the Fulton street station do not now have Chicago rates on shipments from or to points on the other ten eastern roads. There would be no interruption of existing arrangements for lighter service in connection with the Chicago Lighterage Company on shipments

from or to various western and southwestern roads, and the service of the Merchants Lighterage Company and certain rail switching lines would still be available to the various stations and industries affected.

Whether or not the term lighterage is properly applicable to the two services, it is certain that the handling of freight by car float and by lighter differs materially. The car float is an uncovered conveyance, fitted with two tracks, and capable of accommodating eight cars. At the Chicago River & Indiana cradle, the only one on the Chicago River, cars under load are transferred from the railroad to the float. The float, being without power of its own, is then drawn by tugs to various docks along the river. At these docks the carrier's longshoremen or station crews place a gangplank to the car doors and unload the freight. When the cars next to the dock are unloaded the freight from the cars on the outside track is moved through the empty cars. In all cases, following the custom on the river, the contents of the cars are placed on docks or in consignee's warehouses, and in some instances is conveyed to upper floors or remote locations in the warehouses. The car float is used principally in regular service between the cradle and the public station of the Chicago River & Indiana at Fulton street. For the lighter service a self-propelled covered steam lighter is employed. Both carload and less-than-carload freight is unloaded from cars or docks and loaded on the lighter. The Chicago River & Indiana lighter has been used mostly in local service from dock to dock. Lightered freight is unloaded and also placed for consignees. The practice of the Merchants' Lighterage Company is the same, except that where freight is placed in upper stories or away from the dock an extra charge is made.

The official classification contains a rule prohibiting carriers from unloading carload freight for consignees, but at least some of the respondents publish exceptions to this rule under which they unload carload freight through freight houses on request of consignees, or without such request when, because of track congestion or like conditions, it is to the carrier's convenience to do so. This, of course, differs from delivery on industrial tracks, but some of the respondents are and have been parties to the lighterage arrangements and rates of the Chicago Lighterage Company and of the Merchants Lighterage Company, and hence to the unloading of carload freight by those companies without charge. The Lowrey tariff is not governed by any classification, and nothing in this record establishes impropriety in the present method of car-float delivery by the Chicago River & Indiana Railroad. Storage and reconsigning privileges are provided for in the local and joint tariffs of the Chicago River

& Indiana, duly published and filed, and Lowrey's tariff, to which the Chicago River & Indiana and respondents are parties, authorizes the granting of such privileges as are published and lawfully filed by any of the carriers parties thereto.

On behalf of the Chicago River & Indiana it was testified that lighterage by car float can not be performed on the Chicago River any cheaper than by steam lighter, the gain by elimination of one handling being offset by the compulsory use of a small float holding 8 cars, and the consequent spreading of the cost over less revenue tonnage. Figures were introduced on behalf of the Chicago River & Indiana bearing upon the cost of operation of the car-float service, but these figures are based upon an assumed performance for one year and are not conclusive of actual results.

If the service rendered the public is not materially affected, if open and available routes are otherwise afforded, and if the carriers' charges are not unreasonably increased, it is unimportant in this proceeding what justification there may be for the demand of the Chicago River & Indiana Railroad for increased compensation, or whether respondents are warranted in resisting the demand for an additional shrinkage of 2 cents per 100 pounds in their earnings. Witness for the Chicago River & Indiana testified that the arrangements with the respondents were voluntarily entered into; that his company is not desirous of coercing respondents into a continuance of such arrangements, and that his company is not to be understood as complaining against these roads.

We have seen that the shippers and receivers of freight at Chicago either took no interest in this question or abandoned their protests against the proposed action of respondents. There is, therefore, no showing that the public will be adversely affected if the cancellations become effective. No reason appears for requiring respondents to employ this delivery service when deliveries can be made in other ways at the same cost to the shipper or receiver and at less cost to respondents.

There appears no sufficient reason for denying to respondents the right to withdraw their absorptions of the car-float charges of the Chicago River & Indiana Railroad.

The suspension order will be vacated as of December 1, 1913.

28 I. C. C.



INVESTIGATION AND SUSPENSION DOCKET No. 253.  
MASSACHUSETTS-MAINE WOOL RATES.

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*Submitted October 21, 1913. Decided December 1, 1913.*

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Respondents having justified the increase in the rate on wool, any quantity, from Lawrence, Mass., to Lewiston, Me., the order of suspension will be vacated.

*G. W. Collier* for Maine Spinning Company.

*Bruce Wyman* for Boston & Maine Railroad.

*S. M. Carter* for Maine Central Railroad Company.

REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

The tariff under suspension increases the rate on wool, any quantity, from Lawrence, Mass., to Lewiston, Me., from 12½ to 15 cents per 100 pounds. Has the increase been justified?

The representative of the Maine Spinning Company, of Boston, which is the protestant in this case, stated that neither he nor his company were directly interested in the rate from Lawrence to Lewiston, but that they were interested in that from Lawrence to Skowhegan. At the present time the rate from Boston to Skowhegan is 17½ cents per 100 pounds, while from Lawrence it is 20 cents per 100 pounds. The rate from both Boston and Lawrence to Lewiston is 12½ cents per 100 pounds. Some time ago the representative of the protestant called the attention of the respondents to the fact that the rate from Lawrence to Skowhegan was 2½ cents higher than from Boston, while the rate from Lawrence to Lewiston was the same as from Boston. He insisted that there was no reason for this difference and that the discrimination should be removed by reducing the rate from Lawrence to Skowhegan to the Boston basis. The Boston & Maine conceded the discrimination but undertook to remove it by advancing the rate from Lawrence to Lewiston. It was conceded by the protestant upon the hearing that it desired to keep the rate from Lawrence to Lewiston at its present figure of 12½ cents solely for the purpose of using this as a club with which to compel the respondent to reduce its present rate from Lawrence to Skowhegan.

The distance from Lawrence to Lewiston is 125 miles, and the class rates now in effect as follows: First, 36; second, 30; third, 24; fourth, 19; fifth, 15; sixth, 12. It will be seen therefore that the present rate on wool is substantially equivalent to the sixth-class rate and that the proposed rate will be equal to fifth class.

In the *Wool Investigation*, 23 I. C. C., 151, 169, the Commission held that wool in the grease should be classified under western classification, l. c. l. second class, and c. l. fourth class, with a minimum of 24,000 pounds in standard cars 36 feet in length. It appeared in that investigation that western wool, as presented for shipment in the grease, was heavier than eastern wool and would readily load to the minimum prescribed.

In *Traugott Schmidt & Sons v. M. C. R. R. Co.*, 23 I. C. C., 684, we considered reasonable rates for the transportation of eastern wools. It appeared that these wools would not load as heavily as those produced in the west and the conclusion was reached that eastern wool should be classified, l. c. l. first class, c. l. third class, with minimum of 16,000 pounds.

Still later the Commission considered rates on scoured wool, which is lighter than either eastern or western wool in the grease, the dirt having been removed. It appeared that scoured wool, uncompressed, could not be loaded much, if any, in excess of 10,000 pounds to the car, and the opinion was expressed that upon this wool a carload rate substantially equivalent to second class with a minimum of 10,000 pounds might properly be charged. 25 I. C. C., 185.

Unless we are to entirely repudiate the foregoing cases we must hold that a rate of 15 cents per 100 pounds from Lawrence to Lewiston is not excessive.

Some claim is made that wool rates in different parts of New England are not properly adjusted with one another, but no question of discrimination is presented or considered in passing upon the reasonableness of this increased rate. If such discriminations exist they should be called to the attention of the Commission by proper complaint.

We hold that the respondents have justified the increase and the order of suspension will therefore be vacated.

23 I. C. C.

No. 5250.

AMERICAN AGRICULTURAL CHEMICAL COMPANY  
*v.*  
BANGOR & AROOSTOOK RAILROAD COMPANY ET AL

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*Submitted June 24, 1913. Decided October 7, 1913.*

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Upon the facts of record in this case, *Held*, That the shipments in question were not misrouted by the initial carrier. Complaint dismissed.

*Blair & Hillyer* for complainant.

*John A. Kratz, jr.*, for Bangor & Aroostook Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation having its general offices at New York, N. Y. It is engaged in the manufacture and sale of commercial fertilizer throughout the United States and maintains a plant at Searsport, Me. By petition, filed October 2, 1912, it alleges that it was subjected to the payment of unjust and unreasonable charges for the transportation of four carloads of fertilizer from Searsport to Fort Fairfield and Caribou, Me., on account of the alleged misrouting of said shipments by the initial carrier, the Bangor & Aroostook Railroad Company.

The record shows that on December 21, 22, and 23, 1911, complainant delivered to the Bangor & Aroostook Railroad (hereinafter called the defendant), at Searsport, Me., four carloads of fertilizer, each of which weighed 42,880 pounds. One of the cars was destined to Fort Fairfield and the other three cars to Caribou. Via the route of movement the cars passed through a portion of the Dominion of Canada. The rate applied to the shipments was 29 cents per 100 pounds, being made up of defendant's local rate of 5 cents from Searsport to Brownsville Junction, Me., and a rate of 24 cents of the Canadian Pacific Railway beyond. Charges were collected in the sum of \$497.40 on the aggregate weight of 171,520 pounds. At the same time there was a combination rate from Searsport to the destinations mentioned of 13 cents, made up of defendant's local rate of 3 cents to Northern Maine Junction, Me., and a joint rate of 10 cents applicable via the Maine Central Railroad to Vanceboro, Me., and the Canadian Pacific beyond. At the rate of 13 cents the charges upon the four shipments would have been \$222.98. Complainant alleges

that the shipments were misrouted by defendant and seeks reparation in the sum of \$274.42. No attempt was made by complainant to prove that the rates assessed were unreasonable via the route of movement.

The facts of record upon which the question of misrouting depends are somewhat peculiar and a brief description of complainant's practice with respect to its shipments is necessary to an understanding of the issues. Bills of lading and shipping orders for the shipments from the various plants operated by complainant are made out at its office in New York, under the direction of its traffic manager, and the bills of lading for the cars in question were so prepared. The bills so prepared by the clerical force are examined by the traffic manager, errors corrected by him, and omissions supplied. The bills are made out in series of three by the use of carbon sheets. The first copy does not go to the railroad company, being a memorandum retained by complainant at its New York office for statistical purposes. The second of the series is the original bill of lading, which is signed by the railroad agent and shipper and returned to the shipper. The third in the series is the shipping order, which is signed by the shipper only and retained by the carrier.

In each instance the bill of lading submitted by complainant at the hearing provided for routing of the car via Canadian Pacific Railway; and, in each instance, in the space provided in the bill of lading for insertion of the rates applicable to the transportation, there is a notation, in writing different from that on the remainder of the bill, reading on two of the bills as follows, "3¢. No., Me., Jct., 10¢ beyond"; while two of the bills bear notation in a similar column and in writing different from that in the remainder of the bill "3¢ & 10¢."

It is well known that in ordinary practice the shipper presents to the carrier's agent the bill of lading and shipping order. The agent ordinarily signs the bill of lading as soon as he is assured that the property is in the possession of the carrier, returns the bill of lading to the shipper, and retains the shipping order for his own use and as showing the shipper's instructions. In this case the shipping orders, which are carbon copies of the bills of lading, do not bear the notations which were on the bills of lading with respect to the rates. This discrepancy between the shipping orders and the bills of lading was called to the attention of the complainant's traffic manager, who was its witness, and he stated that the notation as to the rates had been inserted by him after the remainder of the bills of lading had been prepared by a clerk in his office. It was his opinion that the failure to have such notation appear also on the shipping orders was

due to the use of a torn piece of carbon, and consequently he failed to copy such notation on the shipping orders. Defendant's agent at Searsport, who signed the bills, expressed the opinion that the notation as to rates was not on the bills of lading when presented to him for signature, for he said that if the bills of lading had contained a notation as to rates which conflicted with the route inserted by complainant he would not have forwarded the shipments at the time but would have called upon his superior officer for further instructions. The agent was unable to state positively, however, that the notation as to rates was not on the bills when signed, about 18 months having elapsed between the shipment and the hearing.

It is clear that if the notation as to rates was not on the bills of lading when they were presented to the carrier's agent the shipments were not misrouted, inasmuch as defendant complied with the specific routing instructions by carrying the shipments to its junction with the Canadian Pacific Railway and there turning them over to the latter line for transportation to destination. If, however, the notation as to rates was on the bills of lading when signed by defendant's agent, complainant may apparently invoke Conference Ruling 286 (f), to the effect that the obligation rests upon the carrier's agent to refrain from executing a bill of lading containing provisions which are contradictory and therefore impossible of execution, and that under such circumstances the carrier's agent should ascertain from the shipper whether the rate or the route given in the shipping instructions should be followed.

At the hearing the principal issue was one of fact as to whether the notation as to rates was on the bills of lading when presented to the carrier's agent or was inserted by the shipper after the bills of lading had been signed by the agent and returned to the shipper. It is difficult to determine this question upon the evidence of record. The preponderance of such evidence would appear to be with complainant. Its traffic manager testified positively that the notation was on the bills of lading when presented to the carrier's agent, and the carrier's agent was unable to testify positively to the contrary.

If the shipper had tendered its traffic unrouted, it would have been the duty of the initial carrier to forward it via the cheapest available route; but the carrier was bound to obey the shipper's routing instructions. It is undisputed that the directions to route via the Canadian Pacific were on the shipping order given to the defendant; and that the notation as to rates, although they may have been on the bills of lading when signed by the agent, were not upon the shipping orders prepared by complainant and transmitted to defendant which purported to show complainant's instructions as to routing.

The Commission has recently held informally that when a shipper prepares a bill of lading providing for the carriage of property to a particular destination and marks a different and erroneous address on the package, the carrier will not be held responsible for the freight charges incurred in transporting the property to the destination shown on the package, although the correct destination is shown on the bill of lading. We think that where the shipper desires to prescribe the route over which its property shall be transported, all of its instructions in that respect should be placed upon the shipping order given to the carrier as well as upon the bill of lading signed by the carrier and retained by the shipper; and that, in instances where the bills of lading and shipping orders are prepared by the shipper and the shipper notes upon the bill of lading certain instructions which it fails to note on the shipping order, the carrier can not be held liable for misrouting if it complies with the instructions shown on the shipping order. It follows, therefore, that this complaint must be dismissed, and it will be so ordered.

No. 5025.

MASON BROTHERS

v.

SOUTHERN PACIFIC COMPANY ET AL

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*Submitted October 16, 1912. Decided October 7, 1913.*

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Combination rate of \$1.98 per 100 pounds charged for the transportation of three carloads of grapes from Lodi, Cal., originally consigned to Minneapolis, Minn., and at that point reconsigned to New York, N. Y., found not to have been authorized by defendants' tariffs. Reparation awarded on basis of the lawfully published rate of \$1.15 per 100 pounds.

*G. M. Steele* for complainant.

*C. W. Durbrow* for Southern Pacific Company; Union Pacific Railroad Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; and Western Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants, L. T. Mason and W. M. Mason, partners, under the firm name of Mason Brothers, are engaged in the fruit business at Lodi, Cal. By petition, filed July 20, 1912, they assail as unjust and unreasonable the charges collected by defendants for the transportation of certain carload shipments of grapes from Lodi, Cal. to New York, N. Y., and ask reparation.

In September, 1911, complainants shipped three carloads of grapes from Lodi, Cal., consigned to Minneapolis, Minn., at which point they were reconsigned to New York, N. Y. Two of the cars moved via the Southern Pacific, Western Pacific, Denver & Rio Grande and Chicago, Rock Island & Pacific railways to Omaha, Nebr., and thence via the Chicago, St. Paul, Minneapolis & Omaha Railway (hereinafter called the Omaha line), to Minneapolis. From Minneapolis they moved via the Omaha line and the Chicago & North Western Railway (hereinafter called the North Western), to Chicago, Ill., and thence via the Chicago & Erie and the Erie railroads to New York. The remaining car moved via the Southern Pacific and Union Pacific to Omaha, and thence via the Omaha line to Minneapolis. From Minneapolis to New York the movement was over the same lines that carried the other cars. Transportation charges were collected on each shipment at a combination rate of \$1.98 per

100 pounds, made up of a rate of \$1.15 from Lodi to Minneapolis, a rate of 18 cents from Minneapolis to Chicago, and a rate of 65 cents from Chicago to New York. The charges were based upon an estimated weight of 26,460 pounds as to each shipment, or a total weight of 79,380 pounds, and amounted to \$1,571.73. There were also refrigeration and other charges which are not in dispute.

The transcontinental tariffs in effect at the time the shipments moved, to which all the defendants were parties, contained a rate of \$1.15 per 100 pounds on grapes in carloads from Lodi to Minneapolis, which rate applied also to Chicago and to New York and other eastern points. Complainants contend that the charges collected were unjust and unreasonable to the extent that they exceeded charges that would have accrued at the rate of \$1.15 from Lodi to New York plus the local rate of 18 cents from Minneapolis to Chicago.

The Southern Pacific and Western Pacific lines have expressed willingness to settle on the basis of complainants' contention if authorized to do so. They insist that the Omaha and North Western lines are entitled to and should be allowed their local rate of 18 cents for the movement from Minneapolis to Chicago, which was necessary to put the shipments back in line of the direct route from Lodi to New York.

The tariff under which the shipments moved to Minneapolis contained a provision to the effect that shipments at rates named therein should be subject to terminal charges, privileges, and allowances provided in tariffs of the individual lines parties thereto, lawfully on file with the Interstate Commerce Commission. The reconsigning tariff of the Omaha line, in effect at the time the shipments moved, provided that fruits in carloads might be "reconsigned to a point beyond in the same direction" on its own or connecting lines without additional charge. The tariff of the North Western authorized reconsignment of citrus and deciduous fruits in transit without charge to a point beyond, but provided that when reconsignment involved a back haul the local rates to and from the original destination should apply.

The tariff which contained the joint through rate of \$1.15, as aforesaid, prescribed routing via the Southern Pacific to Ogden, Utah, or via the Southern Pacific and Western Pacific to Salt Lake City, Utah, but did not name any definite routing beyond those points. Each of the shipments in question moved over one or the other of the routes designated as far as Ogden or Salt Lake City.

The defendants contend that the joint through rate of \$1.15 to New York and other eastern points contemplated a through movement over a direct route; that a diversion from the direct route, such as involved in this case, was not authorized; that the 18-cent rate



from Minneapolis to Chicago was established for the benefit of fruit shipments from west of the Missouri River, to be used in the event shippers should find the Minneapolis market unsatisfactory; and that the reconsigning tariffs of the Omaha and North Western lines can not reasonably be held to authorize reconsignment to New York of California shipments destined to Minneapolis, unless the reconsignment be made while the shipments are on the direct line of travel from the point of origin to New York.

It is not questioned that if the shipments had been originally consigned to New York the usual and natural route of movement would have been via the North Western from Omaha in direct line to Chicago, rather than the circuitous out-of-line movement via Minneapolis, which made the haul to New York about 265 miles greater than by the direct route.

The controlling question in the case is whether the tariffs of the Omaha and North Western lines authorized reconsignment at Minneapolis on the basis of the through rate to New York. Either complainants were entitled to the joint through rate of \$1.15, or they were justly required to pay the combination rate. We find no tariff authority for application of the joint through rate plus the rate of 18 cents from Minneapolis to Chicago.

A significant fact is that at the time the shipments moved the rate of \$1.15 was blanketed to embrace points of importance from the Rocky Mountains to the Atlantic seaboard, including most points in trunk line and central freight association territories. The immense territory covered by the blanket must be kept in view in considering the reconsigning privileges granted by carriers parties to the blanket rate. To reach points within this vast territory frequent deviations from a direct line are required, and it is but reasonable to regard such deviations as having been within the contemplation of the carriers in framing their reconsigning tariffs; otherwise uncertainty and confusion must result.

Minneapolis is somewhat out of a direct line from Lodi to New York, but when the question of the scope of the reconsigning privilege is considered in connection with the extent and magnitude of the blanket rate under which it is applied we are constrained to hold that New York is "a point beyond in the same direction." within the meaning of the reconsigning tariffs. Undoubtedly New York is in the same general direction from Lodi as Minneapolis.

The tariffs of defendants provide for transportation to points within the extreme limits of the blanket territory, and in order to give such tariffs and the reconsigning provisions in connection therewith reasonable interpretation, we think a point on the Atlantic seaboard, such as New York, must be considered as in the same

direction from the Pacific coast as Minneapolis. We therefore hold that complainants' shipments were entitled to be reconsigned at Minneapolis to New York without charge at the joint through rate of \$1.15. No question as to the reasonableness of the tariffs is involved in the case, and we express no opinion upon that matter.

Upon consideration of all the facts of record, we are of opinion and find that the rate of \$1.98 per 100 pounds collected on the shipments in question was not in accordance with the tariffs, and we further find that complainants have been damaged to the extent of the difference between the charges paid and charges that would have accrued if the lawful rate of \$1.15, plus the refrigeration and other charges, as to which there is no dispute, had been applied; and that complainants are entitled to awards of reparation against the Southern Pacific Company, Western Pacific Railway Company, Denver & Rio Grande Railroad Company, Chicago, Rock Island & Pacific Railway Company, Chicago, St. Paul, Minneapolis & Omaha Railway Company, Chicago & North Western Railway Company, Chicago & Erie Railroad Company, and Erie Railroad Company in the sum of \$439.24, with interest from October 16, 1911; and against the Southern Pacific Company, Union Pacific Railroad Company, Chicago, St. Paul, Minneapolis & Omaha Railway Company, Chicago & North Western Railway Company, Chicago & Erie Railroad Company, and Erie Railroad Company in the sum of \$219.62, with like interest.

An order will be entered accordingly.

28 I. O. O.

No. 5392.

DAIRYMEN'S SUPPLY COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL

*Submitted May 10, 1913. Decided October 10, 1913.*

Complainant alleges that it is subjected to undue prejudice and disadvantage because defendants return free of charge property exhibited at state fairs and expositions at Syracuse, N. Y., and Trenton, N. J., but refuse to return free of charge property exhibited at the National Dairy Show Association in Chicago, Ill. Upon the facts of record; *Held*, That the practice of defendants is not in violation of section 3 of the act. Complaint dismissed.

*Alfred N. Keim and N. B. Kelly* for complainant.

*Henry Wolf Bickel and L. E. Hinkle* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of dairy machinery and supplies, with factory and office at Lansdowne, Pa. By petition, filed December 14, 1912, it alleges that defendants Pennsylvania Railroad Company and Pennsylvania Company grant free return movement of property exhibited at expositions and state fairs, when freight charges have been paid to the fair from point of shipment, viz, from Syracuse, N. Y., and from Trenton, N. J., to Lansdowne, Pa., and that said defendants refuse to return free of charge from other points property which has been exhibited by complainant at expositions; that by reason of said regulations or practices complainant and its traffic, as well as the city of Philadelphia and vicinity, have been subjected to unjust discrimination and to undue prejudice and disadvantage; and it asks that the defendants be required to cease and desist from the alleged violations of the act.

The testimony shows that complainant has exhibited at the National Dairy Show Association in Chicago certain bottle-filling, bottle-washing, and bottle-capping machinery and other manufactured articles pertaining to the dairy business. These exhibits were shipped from complainant's factory at Lansdowne to Chicago, Ill., over the defendants' lines. After the exhibition at Chicago the said shipments, or parts thereof, were returned by complainant to Lansdowne, and charges were collected for such return movement in accordance with defendants' tariffs.

Contemporaneously defendants maintain tariff provisions which permit the free return to point of shipment from the state fairs at Syracuse, N. Y., and at Trenton, N. J., of property exhibited at those fairs and which has not changed ownership thereat. The tariff provides, in substance, that property which has been exhibited at county district, or state agricultural fairs, and which has been on exhibit at one point only, will be returned free of charge to original point of shipment. It is further provided that the rules under which said shipments will be returned free will "not apply on shipments of any character forwarded to or from industrial or trade expositions."

Complainant exhibits its property at the Trenton and Syracuse fairs, as well as at the Dairy Show Association in Chicago. Under the tariffs in question it is granted free return movement from the Trenton and Syracuse fairs, but has to pay charges on the return movement from the dairy show. At the hearing it was unable to show that it had been damaged in any respect by the fact that the defendants granted the free return movement from the Trenton and Syracuse fairs and made no similar provision with respect to the dairy show.

Defendants attempt to justify their present practice on the ground that state and county agricultural fairs are wide in their scope; that there are many ways in which they can be made useful to the public in the education of the agricultural communities and in the improvement of farm products, but that the National Dairy Show Association at Chicago is a trade or industrial exposition; that defendants have uniformly declined to grant free return movement of property from industrial or trade expositions for the reason that property is exhibited there for commercial purposes in the hope of obtaining sales thereat; that if free transportation of exhibits should be accorded private corporations or associations holding expositions of dairy machinery it might also be urged that the manufacturers of automobiles should be granted free transportation of their property from the automobile shows which are now held in substantially all of the large cities, and that it would be necessary likewise to extend the privilege to manufacturers of cement products and numerous other articles which are extensively exhibited throughout the country at trade and industrial expositions, and which are to a greater or lesser extent used by agricultural communities. The position taken by the defendants is perhaps best stated in a letter from the general freight agent of the Pennsylvania Company, which was filed of record at the hearing and reads as follows:

The state, county, and district fairs are, for the most part, organized and maintained by a representative body of business men and farmers, in the interest and for the education of the community at large and the farmer in particular. In order that these exhibitions may be made successful in the broadest

28 I. C. C.

sense the carriers have voluntarily offered exhibitors a free return of their exhibits within 10 days after the close of the fair, when accompanied by a certificate from the proper officer of the fair, to the effect that the property has been exhibited and has not changed ownership. It is true, of course, the manufacturers of agricultural and dairy machinery exhibit their product at these fairs and are accorded the benefit of these ratings, while at the same time they receive full commercial benefit therefrom. However, it is not possible to restrict a privilege to any one certain class of exhibitors, and in order to stimulate the growth of these exhibitions along educational lines it is necessary to accord the privilege to a manufacturer who obtains the commercial advantages as well as the producer on whose exhibits the real value of the fair depends. In contradistinction to the organization and purposes of the agricultural fair, the industrial and trade exhibitions are organized by professional promoters for the interest of the trade. This is true, as far as material for the purpose of this complaint, of the National Dairy Show. In this instance the Dairy-men's Supply Company receive much advertising from their exhibits and, undoubtedly, commercial benefits through the sale of their products.

Section 22 of the act provides:

That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates \* \* \* to or from fairs and expositions for exposition thereat.

But, while the act authorizes the free transportation of property for the purposes named, it does not require the carriers to grant such transportation. It follows that the carriers may grant such transportation or deny it, as they deem best, provided their practices in that respect do not result in unjust discrimination under section 2 or undue preference or prejudice under section 3 of the act.

Upon the facts of record we are of the opinion that the practice does not result in undue prejudice or disadvantage to this complainant. Like all other exhibitors at the National Dairy Show Association, it must pay defendants' published rates for transportation of property to and from that exhibition, and it receives the same privileges as other shippers with respect to the free return of property exhibited at county, district, or state agricultural fairs. Our conclusion is that the complaint must be dismissed, and it will be so ordered.

No. 5253.

BIRGE-FORBES COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY  
ET AL.

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*Submitted April 1, 1913. Decided October 7, 1913.*

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Rates for the transportation of certain shipments of cotton from points on the Midland Valley and Fort Smith & Western railroads, in Oklahoma, to New Orleans, La., for export, concentrated and compressed in transit at Muskogee, Okla., not found to have been unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

*J. F. Holt and Luther M. Walter* for complainant.

*Joseph M. Bryson and C. S. Burg* for Missouri, Kansas & Texas Railway system.

*Eugene Mock* for Midland Valley Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the purchase and sale of cotton, with principal place of business at Sherman, Tex. By petition, filed October 14, 1912, it alleges that the rates charged by defendants for the transportation of certain shipments of cotton from points in Oklahoma to New Orleans, La., were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked.

Numerous shipments are described in the petition as having moved between September, 1910, and March, 1911. The cotton originated at Kanima, Keota, Leonard, Taft, and Warner, Okla., points on the line of the Midland Valley Railroad, and at McCurtain and Indianola, Okla., points on the line of the Fort Smith & Western Railroad; and was shipped to Muskogee, Okla., where it was compressed for interstate movement beyond. The shipments from the points on the Midland Valley moved direct to Muskogee, and those from points on the Fort Smith & Western moved via that line to Crowder, Okla., and thence via the Missouri, Kansas & Texas Railway to Muskogee. The distances from the originating points to Muskogee range from 11 miles to 93 miles, and charges at rates ranging from 35 cents to 45 cents per 100 pounds, which included 10 cents per 100 pounds for

compression, were collected at that point. The cotton was compressed to about one-half its original bulk and was reshipped by complainant via the Missouri, Kansas & Texas Railway, Missouri, Kansas & Texas Railway of Texas, Vicksburg, Shreveport & Pacific Railway, Alabama & Vicksburg Railroad, and New Orleans & Northeastern Railroad to New Orleans, La., for export. The rate from Muskogee to New Orleans was 61.5 cents per 100 pounds, for a distance of approximately 884 miles.

There was no joint through rate applicable to the traffic via the route of movement from any of the originating points. There were other routes, however, via which joint through rates to New Orleans were in effect. From McCurtain, Kanima, and Keota there was a joint rate of 68.5 cents, and from the other points there was a joint rate of 71.5 cents. These rates were in effect via both the initial lines and the St. Louis & San Francisco Railroad and its connections, and also via both initial lines and the Missouri, Oklahoma & Gulf Railway and the Missouri, Kansas & Texas Railway of Texas and connections. Under such joint rates concentration and compression were allowed at Muskogee or at some other convenient point, and when the cotton was forwarded from the concentrating point the joint through rate from the point of origin to New Orleans would be applied and the inbound rate absorbed.

The shipments in question were made in the belief that the rates via defendants' lines were the same as via other lines from the same points. After the shipments moved complainant demanded a refund on basis of the joint through rates via the competing lines, and the sum of \$2,608.73 was refunded by defendants. It was thereafter discovered that no tariff authority existed for rates on basis of which the refund had been made, and complainant returned the amount to the defendants and instituted this proceeding.

It appears that the initial lines, in connection with the Missouri, Kansas & Texas Railway, maintained joint through rates from the originating points here involved to Houston and Galveston, Tex., and to St. Louis, Mo., under which the inbound rates to Muskogee on cotton concentrated and compressed at that point were absorbed. It was said, however, that this was so because the Missouri, Kansas & Texas system received the full haul to the destination points. It was further said that the Missouri, Kansas & Texas has never joined in any through rates from these points of origin to New Orleans, for the reason that to do so it would have to allow to the initial lines from 35 to 45 cents to Muskogee, including 10 cents for compression, and to the line beyond Shreveport, La., 18 cents, which would leave its proportion of the through rate so small as to make the traffic unremunerative.

which transportation charges were collected at the same less-than-carload rate, amounting to \$238. All the automobiles were shipped set up and none of them was boxed or crated.

Complainants contend that the charges were unreasonable to the extent that they exceeded charges that would have accrued at a rate of \$4.50 per 100 pounds, and reparation is asked on that basis. At the time the shipments moved there was in effect from and to the points mentioned a carload commodity rate on automobiles of \$3 per 100 pounds, with a minimum weight of 12,000 pounds. Complainants insist that the difference between the carload rate and the less-than-carload rate is too great, and their contention that the charges collected were unreasonable is based chiefly upon their claim in this respect. In view of the principle announced in the case of *Business Men's League v. A. T. & S. F. Ry. Co.*, 9 I. C. C., 318, the difference between the carload rate of \$3 and the less-than-carload rate of \$7 would seem to require explanation.

The carriers deny that the charges were unreasonable, and in justification of the \$7 rate they say that automobiles in less than carloads, not boxed or crated, are rated double first class in both the western and southern classifications and two and one-half times first class in the official classification. The first-class rate in effect from New York and Syracuse to Portland at the time the shipments moved was \$3 per 100 pounds, but this rate has been since increased to \$3.70.

The carriers say that the first-class rate from New York and Syracuse to Portland is a water-competitive rate, and less than it would be but for such competition; that automobiles, especially in less-than-carload quantities, do not move by water, and hence the rate of \$7, though slightly more than double the first-class rate, was a reasonable rate for the traffic. Manufacturers and dealers frequently ship automobiles in carloads by double-decking the cars, but it was testified at the hearing that it is not feasible for the carriers to do this, or to make use of the space above one or more automobiles in a single car. Carload shipments are sealed and transported intact to destination, and this method results in the minimum risk of pilferage or damage as compared with the risk to which less-than-carload shipments are exposed.

There are perhaps but few articles of freight more subject to injury and unsatisfactory to handle than automobiles uncrated. When shipped in less than carloads they must be handled with the greatest care to prevent injury from other freight. It is likewise true that a comparatively small injury to an average automobile will generally result in damages equal to or in excess of the revenue received for its transportation. There is evidence in the record to the effect that claims for loss and damage to automobiles during the



No. 4347.  
H. L. KEATS AUTO COMPANY  
v.  
OREGON-WASHINGTON RAILROAD & NAVIGATION COM-  
PANY ET AL.

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No. 4347 (Sub-No. 1).  
MENZIES-DU BOIS AUTO COMPANY  
v.  
OREGON-WASHINGTON RAILROAD & NAVIGATION COM-  
PANY ET AL.

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*Submitted February 16, 1912. Decided October 7, 1913.*

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Charges collected for the transportation of three less-than-carload shipments of automobiles from New York and Syracuse, N. Y., to Portland, Oreg., not found to have been unreasonable. Complaints dismissed.

*Edward M. Cousin* for complainants.

*A. C. Spencer* for Oregon-Washington Railroad & Navigation Company; Oregon Short Line Railroad Company; and Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations engaged in buying and selling automobiles at Portland, Oreg. By petitions, filed respectively August 22 and August 19, 1911, they allege that unreasonable charges were collected by defendants for the transportation of certain shipments of automobiles from New York and Syracuse, N. Y., to Portland, Oreg. Reparation is asked.

In August, 1909, complainant, H. L. Keats Auto Company, shipped via defendants' lines from New York to Portland two automobiles as follows: One of the weight of 3,765 pounds, delivered August 26, 1909, and one of the weight of 3,200 pounds, delivered September 17, 1909, on each of which transportation charges were collected at a less-than-carload commodity rate of \$7 per 100 pounds, amounting in the aggregate to \$487.55. In the same month complainant, Menzies-Du Boise Auto Company, made a shipment of two automobiles from Syracuse to Portland of the weight of 3,400 pounds, for

which transportation charges were collected at the same less-than-carload rate, amounting to \$238. All the automobiles were shipped set up and none of them was boxed or crated.

Complainants contend that the charges were unreasonable to the extent that they exceeded charges that would have accrued at a rate of \$4.50 per 100 pounds, and reparation is asked on that basis. At the time the shipments moved there was in effect from and to the points mentioned a carload commodity rate on automobiles of \$3 per 100 pounds, with a minimum weight of 12,000 pounds. Complainants insist that the difference between the carload rate and the less-than-carload rate is too great, and their contention that the charges collected were unreasonable is based chiefly upon their claim in this respect. In view of the principle announced in the case of *Business Men's League v. A. T. & S. F. Ry. Co.*, 9 I. C. C., 318, the difference between the carload rate of \$3 and the less-than-carload rate of \$7 would seem to require explanation.

The carriers deny that the charges were unreasonable, and in justification of the \$7 rate they say that automobiles in less than carloads, not boxed or crated, are rated double first class in both the western and southern classifications and two and one-half times first class in the official classification. The first-class rate in effect from New York and Syracuse to Portland at the time the shipments moved was \$3 per 100 pounds, but this rate has been since increased to \$3.70.

The carriers say that the first-class rate from New York and Syracuse to Portland is a water-competitive rate, and less than it would be but for such competition; that automobiles, especially in less-than-carload quantities, do not move by water, and hence the rate of \$7, though slightly more than double the first-class rate, was a reasonable rate for the traffic. Manufacturers and dealers frequently ship automobiles in carloads by double-decking the cars, but it was testified at the hearing that it is not feasible for the carriers to do this, or to make use of the space above one or more automobiles in a single car. Carload shipments are sealed and transported intact to destination, and this method results in the minimum risk of pilferage or damage as compared with the risk to which less-than-carload shipments are exposed.

There are perhaps but few articles of freight more subject to injury and unsatisfactory to handle than automobiles uncrated. When shipped in less than carloads they must be handled with the greatest care to prevent injury from other freight. It is likewise true that a comparatively small injury to an average automobile will generally result in damages equal to or in excess of the revenue received for its transportation. There is evidence in the record to the effect that claims for loss and damage to automobiles during the 28 I. C. C.

year 1911, paid by the defendant Oregon-Washington Railroad & Navigation Company, amounted to \$5,022.34. The total revenue realized by all the carriers participating in the transportation of the shipments as to which the claims were paid was about \$23,412.63. There is other testimony which tends to show greater loss and damage for other years.

Since the hearing in this case the carload commodity rate on automobiles from New York and Syracuse to Portland has been increased from \$3 to \$3.30. The less-than-carload commodity rate of \$7 has been eliminated, the effect of which was to return less-than-carload shipments to the class-rate basis; that is, double first class under western classification, or a rate of \$7.40, an increase of 40 cents over the rate charged on the shipments in question. The tariff that provided these changes was for a time suspended under Investigation and Suspension Docket No. 154, but after hearing the tariff was allowed to become effective, in modified form, on April 15, 1913. The class rating on automobiles in less than carloads was not specifically involved, however, in the Commission's final action upon the suspension. 26 I. C. C., 456.

After careful consideration of all the evidence of record we are not persuaded that the charges collected on the shipments in question were unreasonable. An order will be entered dismissing the complaints.

28 I. C. C.

No. 4769.  
**MINNEAPOLIS CEREAL COMPANY**  
*v.*  
**CHICAGO & NORTH WESTERN RAILWAY COMPANY**  
**ET AL.**

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*Submitted November 14, 1912. Decided October 7, 1913.*

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Complainant alleges that defendants' rules, prescribing a basis for charges upon packages containing premiums, are unjust and unreasonable; *Held*, That the allegation is not sustained by the facts of record. Complaint dismissed

*Herbert T. Park* and *Eugene S. Bibb* for complainant.

*C. C. Wright* for Chicago & North Western Railway Company.

*Frederick L. Ballard* for Pennsylvania Railroad Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

*James B. Sheean* and *W. D. Burr* for Chicago, St. Paul, Minneapolis & Omaha Railway Company and Chicago & North Western Railway Company.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*Dudley G. Gray* for Baltimore & Ohio Railroad Company.

*O. W. Dynes* and *J. T. Conley* for Chicago, Milwaukee & St. Paul Railway Company.

*W. F. Dickinson* and *R. G. Brown* for Chicago, Rock Island & Pacific Railway Company.

*W. H. Bremner* for Minneapolis & St. Louis Railroad Company.

*D. P. Connell* for New York Central lines.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

Complainant is a corporation engaged in the manufacture and sale of cereal foods. It has its principal place of business in Minneapolis, Minn., and a mill at Belle Plaine, Minn. By petition, filed March 22, 1912, it alleges that unreasonable and unjust charges are collected by defendants for the transportation of carload and less-than-carload shipments of the cereal food "Cream of Rye," having premiums therewith, from Belle Plaine to points in western and official classification territories. Reparation and the establishment of reasonable rates are sought.

To stimulate the sale of its cereal product, complainant incloses in each package, as a premium, a silver-plated spoon. The spoon weighs about 1 ounce, the cereal food about 19 or 20 ounces, and the container about 2 ounces, making a total weight of approximately 23

ounces for the package, which is sold at retail for 15 cents. For shipment 24 packages are placed in a case or carton, the whole weighing about 40 pounds, of which  $1\frac{1}{2}$  to  $1\frac{3}{4}$  pounds represent the weight of spoons. The cereal food is sold to the wholesale jobber in lots of from 5 to 800 cases, at \$2.70 per case, delivered; that is, complainant bears the freight charges. Complainant does not sell direct to the retail dealer, the latter being supplied by the jobber with small quantities of the cereal. The spoons cost complainant about  $3\frac{1}{2}$  cents each, in lots of 1,000 gross. They represent almost one-third of the invoice price to the jobber of the package in which they are inclosed.

Both western and official classifications contain a rule providing that when a package contains articles of more than one class the highest rate applicable to any commodity in such package shall apply to the whole package. In both classifications cereal food is rated fourth class in less than carloads and fifth class in carloads. In less than carloads these spoons are rated one and one-half times first class under western and first class under official classification.

In each classification territory, however, an exception is made to the rules above mentioned with respect to packages containing premiums. The rule in western classification territory is as follows:

Articles in packages containing premiums in cases, c. l. and l. c. l., will be charged at 110 per cent of the rates provided for the same articles packed in the same manner as without premiums; provided that carloads containing packages, both with and without premiums, only such portion of the carload as contains premiums will be charged 110 per cent, the remainder of the carload to take the carload rate for the article. Shippers will be required to state on shipping tickets whether or not packages contain premiums.

In official classification territory the rule is as follows:

An article for advertising purposes may be shipped in a package with the commodity it advertises, provided only one such complete advertising article is contained in each package, the commodity shipped to be charged at actual weight, plus weight of the package (subject to the established minimum, carload minimum weight when in carloads) and at the rating applicable on such commodity, the advertising article to be charged at actual weight, plus 20 per cent, at the less-than-carload rate on such article as per established tariffs. In no case, however, shall the advertising article be charged at less than 10 per cent of the gross weight of the package in which it is contained.

There is no considerable difference in the charges resulting from the two rules, and they are much less than charges which would accrue under the classification rules pertaining to packages containing articles of more than one class. Complainant contends, however, that the rules above quoted result in excessive and unreasonable charges.

The testimony shows that the practice of inclosing premiums of various kinds with packages of cereals became somewhat general

about 1901. The carriers then based their charges upon the total weight of the package and the rate applicable to the highest rated commodity therein. This resulted in high charges upon such packages, and a rule was adopted as to carload shipments whereby shippers declared the separate weights of the premium articles and charges were assessed thereon by application of the less-than-carload rate to such declared weight. Under this rule difficulty was experienced in policing the shipments and in ascertaining the weights of the premiums when toys or other articles of different weights were mixed in one consignment. Accordingly the carriers attempted to establish a rule which would be definite in its application. After numerous conferences with shippers the carriers adopted, in 1906 and 1907, the regulations now in force, applicable to both carload and less-than-carload shipments.

A considerable number of firms now inclose premiums with cereal foods, coffee, rice, popcorn, etc. The premiums include glassware, crockery, hardware, candy, silverware, toys, jewelry, and notions, which vary in weight and value. Compared with other premiums the silver-plated spoon is expensive.

To be able to ship premiums in packages is a privilege of value to the shipper. This complainant states that it would not handle premiums if it were necessary to ship them in separate packages. It was demonstrated of record that as to certain carloads of "Cream of Rye" which had moved in western classification territory the rules complained of operated to make the total charges less than those which would have accrued if the carload rates had been applied to the weight of the cereal and the appropriate less-than-carload rates to the actual weight of the spoons contained in the packages. Probably as a result of this showing counsel for complainant announced at the argument that there was no objection to the maintenance of the present rules with respect to carload traffic.

On 23 shipments from Belle Plaine in January, 1912 (including 2 carload and 21 less-than-carload shipments), the charges paid were compared with those which would have accrued on the same articles separately packed (disregarding as to the weight of the spoons the usual provision for a minimum charge based on 100 pounds). The aggregate amount paid on all of said shipments was \$13.04 less than the amount which would have accrued by application to the cereal and the spoons of rates for each article.

The record does not establish that the charges paid by complainant under the rules in question are unreasonable or result in discrimination as between shippers. The complaint must be dismissed, and it will be so ordered.

No. 5329.  
NEW ENGLAND ELECTRIC COMPANY  
*v.*  
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COM-  
PANY.

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*Submitted March 10, 1913. Decided October 7, 1913.*

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Charges for the transportation of a mixed carload of wrought-iron conduit pipe and fittings from Burr Oak, Ill., to Denver, Colo., found to have been unreasonable to the extent that they exceeded charges that would have accrued on basis of the rate applicable to wrought-iron conduit pipe in straight carloads.

*C. W. Durbin* for complainant.

*W. F. Dickinson* and *Wallace T. Hughes* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in buying and selling electrical appliances, with principal place of business at Denver, Colo. Its petition, filed November 29, 1912, attacks as unreasonable and unjustly discriminatory the rate charged by defendant for the transportation in October, 1911, of one carload of wrought-iron conduit pipe and fittings from Burr Oak, Ill., to Denver, Colo.

The shipment described in the petition appears to have originated at Harvey, Ill., and to have been handled in switch movement to Burr Oak. It consisted of 46,000 pounds of pipe and 6,000 pounds of fittings. Burr Oak and Harvey are Chicago rate points within the Chicago switching district. The charges collected amounted to \$281, based on a carload commodity rate of 50 cents per 100 pounds for the pipe and a less-than-carload fourth-class rate of 85 cents per 100 pounds for the fittings. The contention of the complainant is that inasmuch as there was also a commodity rate of 50 cents on pipe fittings in straight carloads this rate should have been applied to the mixed carload, and reparation is asked on that basis. It is not alleged that the fourth-class rate as applied to less-than-carload shipments of fittings is unreasonable. The sole question for determination is whether or not, in view of the maintenance of the same commodity rate for straight carloads of pipe and for straight carloads of pipe

fittings and of the fact that under the western classification provision is made for a fifth-class rate for wrought-iron pipe and fittings in straight or mixed carloads, defendant is justified in denying the privilege of mixing under the commodity rate.

The chief difference between wrought-iron conduit pipe and fittings and other wrought-iron pipe and fittings lies in the fact that the former are cleaned and enameled inside and out, whereas the latter are not. Both the commodity rate and the class rate apply in general to various kinds of cast-iron, wrought-iron, and steel pipe, and the same thing is true of the items covering pipe fittings. The commodity rates, however, are subject to a minimum weight of 48,000 pounds without the privilege of mixing, while the class rates are subject to a minimum weight of 30,000 pounds and mixed carloads are permitted. Defendant contends that fifth-class is the normal classification for pipe and fittings in western classification territory; that the present fifth-class rate of 67 cents per 100 pounds was established as a result of the decision in *Kindel v. N. Y., N. H. & H. R. R. Co.*, 15 I. C. C., 555; and that the action of the carriers in establishing the so-called low commodity rate of 50 cents on straight carloads of wrought-iron pipe and then extending the same rate to straight carloads of pipe fittings followed the publication of this class rate to apply on straight carloads of cast-iron pipe, for which in the past few years there has been a strong demand in the west in connection with public improvements, new water systems, and irrigation projects. It is urged that there is no general or great demand for the mixture, that such mixture would be unnatural and unusual, and that to now require the carrier to broaden the application of the commodity item to permit the mixture of two articles characterized as dissimilar would be to impose an unwarranted burden.

That pipe fittings of various kinds are of greater value than pipe is established by the record, but this fact is of little value in this proceeding for the reason that the same commodity rates are accorded both articles and both are classified alike.

Defendant maintains that wrought-iron pipe and fittings are rarely, if ever, made at the same plant; that pipe, owing to difficulty in loading in and unloading from box cars, is ordinarily shipped in open cars, while fittings, which consist of smaller units, occupy less space and are easily stolen or lost, usually are, and always should be, loaded in box cars, and that for these reasons it would be unfair to require the carriers to mix with pipe in open cars at the same low commodity rate such articles as pipe fittings. Whether or not it be true that pipe and fittings are not usually manufactured at the same plants, we are confronted with the fact that in this instance the pipe and fittings were shipped from the same point of origin, and in a box



car. Furthermore, neither the classification nor the tariff contains any restrictions with respect to the kind of cars to be used.

Investigation has disclosed that both in the east and in the west many tariffs, although providing the same class and commodity carload rates for pipe fittings as for pipe, restrict the application to straight carloads, while in many other instances the rates are published to apply on both straight and mixed carloads, a situation which suggests that to grant complainant's prayer would not be to establish a new or anomalous condition.

Reference is made by defendant to the decision in *Commercial Club, Salt Lake City v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218, for the purpose of showing that the Commission has recognized pipe and pipe fittings as dissimilar, so far as transportation is concerned, and did not in that case authorize mixture of the two at the same carload rate, but prescribed a higher rate for fittings. It is true that in that case we did prescribe from Chicago to Utah common points a rate of 60 cents per 100 pounds for wrought-iron or steel, welded, seamless, or lock-bar pipe, carloads, minimum weight 40,000 pounds; and a rate of 65 cents per 100 pounds for—

Pipe fittings and connections, including clean-out fittings, cocks, or valves, wrought, cast, or malleable, or iron-body cocks, valves, and pipe connections (the bodies and principal parts of which are iron, but having brass pieces or parts), screwed, flanged, or with hub ends; also wrought-iron pipe bends, with or without cast-iron flanges; minimum carload weight, 30,000 pounds.

It is to be observed, however, that we also prescribed a rate of 60 cents per 100 pounds for—

Pipe, cast-iron, and cast-iron connections for same; minimum carload weight, 30,000 pounds.

Furthermore, these were all included under the general head of "articles of iron and steel;" our attention was confined to general scales of class and commodity rates of wide scope; and there was no attempt to deal specifically with the relation between pipe and pipe fittings. In *Capital Electric Co. v. B. & O. C. T. R. R. Co.*, 26 I. C. C., 472, the Commission had under consideration rates from Harvey, Ill., to Salt Lake City, and prescribed a rate of 75 cents per 100 pounds to apply on enameled conduit pipe and fittings in carloads.

We are not unmindful of the fact that the minimum earnings per car on basis of the commodity rate of 50 cents and minimum weight of 46,000 pounds exceed those at the fifth-class rate of 67 cents, with minimum weight 30,000, but there is nothing in this record from which to determine the average loading of the articles under discussion.

Our examination of the record convinces us that the denial of the privilege of mixing at the same rate of wrought-iron pipe and fit-

tings of the kind here involved—that is, fittings made of the same material as the pipe and without brass or bronze parts or pieces—results in the application of unjust and unreasonable rates. For the future defendant will be required to maintain for the transportation of mixed carloads of wrought-iron conduit pipe and of fittings made of the same material, without brass or bronze parts or pieces, from Burr Oak, Ill., to Denver, Colo., a rate not in excess of the rate contemporaneously maintained by it for similar transportation of straight carloads of the articles named.

We further find that complainant made the shipment here involved in accordance with the above statement of facts and paid charges thereon at the rate herein found to have been unreasonable; but there are filed with the record invoices which show that deductions for freight allowances were made in settlement with the shippers and we are not convinced that complainant has suffered damages as claimed. The prayer for reparation is denied. An order will be entered in accordance with the findings herein announced.

No. 5154.

MORTON SALT COMPANY ET AL.

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL.

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*Submitted July 5, 1913. Decided October 13, 1913.*

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Morgan's Louisiana & Texas Railroad & Steamship Company filed and posted a tariff naming through rates of \$3 and \$3.975 per net ton on salt from Salt Mine, La., to Cape Girardeau, Mo., and Sulligent, Ala., respectively, in which the delivering line was not named as a party and had not concurred. Charges were collected on shipments from and to the points named on the basis of the combination of intermediate rates; *Held*, That complainant, having shown that it relied upon the rates as published, to its damage, is entitled to reparation against the carrier which issued the tariff.

*John B. Daish and R. V. McCroskey* for complainants.

*J. P. Blair and James G. Wilson* for Morgan's Louisiana & Texas Railroad & Steamship Company.

*Frank W. Gwathmey* for Illinois Central Railroad Company.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

The petition in this case was filed by Morton Salt Company, Avery Rock Salt Mining Company, Edward Ruehman & Company, and W. G. Priddy. For reasons hereinafter appearing, however, the Morton Salt Company, a corporation engaged in buying and selling salt, with principal place of business at Chicago, Ill., will be referred to as complainant. The petition, filed September 18, 1912, attacks as unreasonable and unjustly discriminatory the rates charged by defendants for the transportation of salt in carloads from Salt Mine, La., to Cape Girardeau, Mo., and Sulligent, Ala. It is further alleged that as to some of the shipments to Cape Girardeau the defendants collected charges based upon erroneous weights. The claim was first filed with the Commission with respect to the shipments to Cape Girardeau on October 20, 1911, and with respect to that to Sulligent on September 18, 1911. At the hearing complainant withdrew its claim as to one of the shipments to Cape Girardeau.

Under a contract complainant is the exclusive agent of the Avery Rock Salt Mining Company in the sale of salt in the Mississippi Valley, which includes Cape Girardeau and Sulligent. Under this

contract complainant buys salt of the Avery Rock Salt Mining Company at a certain price f. o. b. cars at Salt Mine.

Between July 8, 1910, and December 16, 1910, the Avery Rock Salt Mining Company shipped for the account of complainant 5 carloads of salt from Salt Mine, consigned to Edward Ruehman & Company at Cape Girardeau, routed "S. P. c/o I. C." The shipments moved via the line of Morgan's Louisiana & Texas Railroad & Steamship Company to New Orleans, La., the Illinois Central Railroad to East St. Louis, Ill., and thence via the St. Louis & San Francisco Railroad to Cape Girardeau. At destination charges were collected in the total sum of \$417.42, based upon an aggregate weight of 218,200 pounds and a rate of \$3.75 per net ton, made up of a rate of 75 cents per net ton to New Orleans and \$3 per net ton thence to Cape Girardeau. Defendants admit that the weight upon which the charges were assessed was excessive and should not have exceeded 210,000 pounds. An overcharge of \$23.67 is outstanding on these shipments.

On August 19, 1910, complainant shipped from Salt Mine to W. G. Priddy at Sulligent, routed "S. P. c/o I. C.," a carload of salt, weighing 53,125 pounds, on which charges were collected in the sum of \$150.64, at a rate of \$5.67 per net ton. The shipment moved via the line of Morgan's Louisiana & Texas Railroad & Steamship Company to New Orleans, Illinois Central Railroad to Aberdeen, Miss., and thence via the St. Louis & San Francisco Railroad to Sulligent. The charges collected were on basis of rates of \$1.175 per net ton to New Orleans, \$3.195 per net ton New Orleans to Aberdeen, Miss., and 6.5 cents per 100 pounds thence to Sulligent. All the shipments involved were sold f. o. b. destinations, and while the respective consignees paid the freight charges in the first instance, they charged same back to complainant.

At the time the shipments moved defendant Morgan's Louisiana & Texas Railroad & Steamship Company had on file with the Commission a tariff naming rates of \$3 per net ton and \$3.975 per net ton on salt from Salt Mine, La., to Cape Girardeau and Sulligent, respectively. The tariff specified routing via New Orleans and Illinois Central Railroad. Both Cape Girardeau and Sulligent, however, are on the lines of the St. Louis & San Francisco Railroad only, and the latter road was not named as a participating or concurring carrier in the rates above mentioned.

Complainant does not attack as unreasonable the rates charged. The only contention is that Morgan's Louisiana & Texas Railroad & Steamship Company, having published and filed rates of \$3 and \$3.975 to Cape Girardeau and Sulligent, respectively, is bound by its publication, and the complainant is entitled to reparation upon basis of the through rates so published.

The evidence shows that the St. Louis & San Francisco was a party to tariffs issued by Morgan's Louisiana & Texas which provided for rates of \$3 and \$3.975 for a number of years prior to January 9, 1910. It appears that the St. Louis & San Francisco withdrew its concurrence in said rates on that date and notified Morgan's Louisiana & Texas Railroad & Steamship Company that it would no longer participate therein. In the reissue of the tariff, effective June 16, 1910, the name of the St. Louis & San Francisco as a participating carrier was omitted, but the compiler of the tariff failed to eliminate therefrom certain points on the lines of the St. Louis & San Francisco, including Cape Girardeau and Sulligent. The reissued tariff named a through rate of \$3 per ton on salt in carloads from Salt Mine to Cape Girardeau and \$3.975 per ton from Salt Mine to Sulligent. The routing shown in the tariff was Morgan's Louisiana & Texas and Illinois Central. This routing was specified in the tariff both before and after the date when the name of the St. Louis & San Francisco was omitted therefrom. The evidence further shows that complainant sold the salt in question on basis of the rates to Cape Girardeau and Sulligent named in the tariff. The bills of lading show the rate per 100 pounds on shipments to Cape Girardeau as 15 cents and to Sulligent as 19.875 cents.

Under the circumstances of this case, we are of the opinion that the initial carrier is responsible and liable for the careless and unlawful manner in which it published the rates in question. Complainant was justified in assuming that the rates published by the initial carrier were lawful rates. The evidence in this case leaves no room for doubt that complainant was damaged by reason of the erroneous publication of the through rates. The tariff was corrected, effective February 3, 1911, and the through rates here in question were canceled.

Our conclusion is that complainant has suffered damage, for which this Commission may award reparation against the initial carrier, to the extent that the charges collected exceeded the charges which would have been collected under the rates published by that carrier. This case is clearly distinguishable from *Kennedy & Co. v. St. L. S. W. Ry. Co.*, 22 I. C. C., 277. In that case the record did not show that the complainant had been damaged because of an error in the published rate. In this case damage is alleged and proved.

We find that complainant shipped 210,000 pounds of salt from Salt Mine, La., to Cape Girardeau, Mo., on which it paid charges in the sum of \$393.75. Had the rate as published by the initial carrier of \$3 per ton been applied, the charges would have been \$315, and complainant has been damaged in connection with these shipments in the sum of \$78.75, for which it is entitled to an award of reparation from

said initial carrier. We further find that complainant shipped 53,125 pounds of salt from Salt Mine to Sulligent, for which it was charged \$150.64. Had complainant been charged on the basis of the rate of \$3.975 per ton as published in the tariff of the initial carrier, the charges would have been \$105.58, and complainant is therefore entitled to an award of reparation on this shipment in the sum of \$45.06, or a total sum from the initial carrier of \$123.81. This does not include the overcharge of \$23.67, which amount all carriers participating in the transportation will be required to refund. Interest will be allowed on the above amounts respectively from December 1, 1910.

An order will be entered in accordance with these findings.

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No. 5498.

EAST DUBUQUE SUPPLY COMPANY  
v.  
ILLINOIS CENTRAL RAILROAD COMPANY.

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*Submitted July 23, 1913. Decided October 13, 1913.*

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Rate of 5 cents per 100 pounds on beer in carloads from Dubuque, Iowa, to East Dubuque, Ill., not found unreasonable. Complaint dismissed.

*W. B. Martin* for complainant.

*A. P. Humburg* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the sale of beer at East Dubuque, Ill. By petition, filed February 3, 1913, it alleges that defendant's rate of 5 cents per 100 pounds for the transportation of beer in carloads from Dubuque, Iowa, to East Dubuque, Ill., is unreasonable. It seeks an order establishing a rate of 3 cents and asks for reparation in connection with shipments made in 1911 and 1912.

Complainant's stockholders and officers are practically the same as the stockholders and officers of the Dubuque Brewing & Malting Company, located at Dubuque. It purchases beer in carload lots from the Dubuque Brewing & Malting Company and sells in less-than-carload lots in the state of Iowa.

The plant of the Dubuque Brewing & Malting Company is on the tracks of the Chicago Great Western Railway in Dubuque. Complainant's warehouse is on the tracks of the Illinois Central Railroad at East Dubuque. The distance by rail between the two plants is about  $8\frac{1}{4}$  miles, a part thereof being over a railroad bridge across the Mississippi River. The movement of a car of beer from the brewery to the warehouse requires the services of a switching crew of the Chicago Great Western, which delivers it on the interchange tracks of the Illinois Central; a switching crew of the latter road transports it through the westbound yard to the eastbound yard, where it is placed in a road train, by which it is delivered at the warehouse. The actual movement of the car is given by defendant as  $6\frac{1}{4}$  miles. The minimum weight attached to the rate is 24,000 pounds. The average weight of the shipments that moved in 1912 was about 26,600 pounds and the heaviest car recorded weighed 37,400 pounds. The charge on a minimum carload is \$12; on an average carload, 26,600 pounds, \$13.30; and on the heaviest car handled, \$18.70. Defendant applies the scale of prices at which the beer was charged to complainant by the brewery to an actual carload shipment which weighed 29,750 pounds, and shows that the gross value of the shipment was \$1,094.50.

In support of its contention complainant refers to a switching rate of \$2 per car maintained by defendant on excelsior wood from Dubuque to East Dubuque. Defendant's evidence is to the effect that this switching rate was established to enable the manufacturer at East Dubuque to meet competition; that it applies only to shipments originating on a connecting line; and that it is therefore not a local rate, but a part of a through rate. Defendant also calls attention to the fact that beer and excelsior wood are not competitive articles, and that the value of an average carload of excelsior wood does not exceed \$50.

Both complainant and defendant submitted for purposes of comparison fifth-class rates or commodity rates, in cents per 100 pounds, on beer across Mississippi River bridges as follows:

Between—	Rate.	Between—	Rate.
Clinton, Iowa and East Clinton, Ill. ....	2.0	Burlington, Iowa, and East Burlington, Ill. ....	5.4
Davenport, Iowa, and Rock Island, Ill. ....	2.0	Keokuk, Iowa, and East Keokuk, Ill. ....	5.9
St. Louis, Mo., and East St. Louis, Ill. ....	2.0	Louisiana, Mo., and East Louisiana, Ill. ....	6.6
Babula, Iowa, and Savanna, Ill. ....	4.9	Prairie du Chien, Wis., and North McGregor, Iowa. ....	8.0
West Keokuk, Iowa, and Keokuk, Ill. ....	7.7		

<sup>1</sup> Commodity; effective from and to plants on terminal railroads only.

The special bridge fare for passengers across the Dubuque bridge was before us in *Railroad Commissioners of Iowa v. I. C. R. R. Co.*,

20 I. C. C., 181, in which we refused to condemn a fare of 30 cents as unreasonable. Excerpts from the record in that case were incorporated in the record in this case. We there found that the states of Illinois and Iowa had assessed the bridge for purposes of taxation at \$1,864,048; and the evidence in this case is that the property of the Illinois Central in Iowa and Illinois is assessed for purposes of taxation at about \$28,000 per mile. We said in that case that "by reason of the great cost of such structures, a bridge has been regarded more or less generally as adding a constructive mileage to the carrier's line." See also *Edwards & Bradford Lumber Co., v. C. B. & Q. R. R. Co.*, 25 I. C. C., 93. Dividing the valuation placed upon the bridge by the assessed valuation of defendant's line in Iowa and Illinois, it appears that such valuation represents the assessed value of  $66\frac{1}{2}$  miles of line.

Under the distance scale prescribed by the state of Iowa the fifth-class rate for 6 miles is 5.2 cents, and for 5 miles or under, 4.9 cents. The traffic in this case involves two switching services besides the use of the bridge. No explanation is given of the forces that operated to depress the rates across the bridges at Clinton, Davenport, and Sabula below the rate of defendant, and nothing has been presented in this case to show that those rates should have greater weight in determining the reasonableness of the rate under attack here, if comparisons alone were to govern, than higher rates at other crossings.

The fact that there is a lower switching rate on excelsior wood is not sufficient to establish that the rate on beer is unreasonable. The complaint must be dismissed. It will be so ordered.

23 I. C. C.



No. 5281.

ARIZONA CORPORATION COMMISSION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

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No. 5281 (Sub-No. 1).

SAME

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted April 8, 1913. Decided October 7, 1913.*

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Rates for the transportation of coal in carloads from Gallup, N. Mex., to various points in Arizona found unreasonable. Reasonable maximum rates prescribed for the future.

*W. P. Geary and F. A. Jones* for Arizona Corporation Commission.

*Robert Dunlap and James L. Coleman* for Atchison, Topeka & Santa Fe Railway Company.

*O. W. Durbrow, E. S. Ives, H. A. Scandrett, and James G. Wilson* for Southern Pacific Company and Arizona Eastern Railroad Company.

*Hawkins & Franklin and Charles H. Bates* for El Paso & Southwestern Railroad Company; Morenci Southern Railway Company; and Arizona & New Mexico Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant in these cases assails as unjust and unreasonable the carload rates on coal and slack from Gallup, N. Mex., a point on the Atchison, Topeka & Santa Fe Railway about 20 miles east of the Arizona-New Mexico state line, to practically all coal-consuming points in Arizona.

In No. 5281 the petition, filed October 16, 1912, involved rates on coal and slack from Gallup to points on the Santa Fe system in Arizona, as to which the rates prior to February 28, 1912, the present rates, and the rates we are asked to establish are stated in cents per net ton in the table following.

From Gallup to—	Distance.	A		B		C	
		Former rates.		Present rates.		Rates sought.	
		Coal.	Slack.	Coal.	Slack.	Coal.	Slack.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Lupton.....	23	100	.....	95	80	55	40
Chambers.....	48	240	235	145	125	60	54
Adamana to Holbrook.....	1 95	325	235	200	170	1 104	1 89
Pensance to Winslow.....	1 128	335	235	235	200	1 125	1 110
Moqui to Canyon Diablo.....	1 154	360	235	260	220	1 146	1 131
Hibbard to Flagstaff.....	1 186	365	235	260	220	1 167	1 152
Riordan to Williams.....	1 220	385	305	285	245	1 192	1 177
Supai to Ash Fork.....	1 243	415	305	315	270	1 204	1 189
Cinder Pit to Jerome Junction...	1 282	415	305	320	265	1 228	1 213
Granite to Phoenix.....	1 437	415	305	360	305	1 305	1 290
Crown King.....	360	415	.....	415	.....	260	245
Parker.....	494	415	.....	415	.....	335	320
Pineveta to Seligman.....	1 271	415	.....	315	270	1 223	1 207
Chino to Yampel.....	1 293	415	.....	320	275	1 224	1 219
Fields to Kingman.....	1 358	415	.....	360	305	1 265	1 250
Rock Crusher to Powell.....	1 400	415	.....	410	350	1 290	1 275
Topock.....	407	415	.....	410	350	.....	.....

<sup>1</sup> Figure applies to the most distant point.

<sup>2</sup> Rate of \$3.35 per ton on coal (except stock), carload, from Gallup to Jerome Junction.

<sup>3</sup> Rate of \$2.50 per ton on stock coal, carload, from Gallup to Jerome Junction.

Column "A" of the table shows rates in effect prior to February 28, 1912. In *Maricopa County Commercial Club v. P. & E. R. R. Co.*, 22 I. C. C., 221, decided January 9, 1912, we found that the rate then in effect on coal from Gallup to Tempe and Mesa, Ariz., points on the Arizona Eastern Railroad a few miles beyond Phoenix, was unreasonable to the extent that it exceeded \$3.60 per ton, and in connection therewith said:

We shall prescribe as a maximum for the future a joint rate of \$3.60 per ton, and shall expect the carriers to adjust the intermediate rates on the basis of the rate prescribed.

Most of the points involved in this petition are between Gallup and the points to which the \$3.60 rate was prescribed. The remaining points are chiefly on the main line of the Santa Fe west of Ash Fork. When the carriers on February 28, 1912, reduced the rate to Tempe and Mesa, in compliance with our order in the case referred to, they did not "adjust the intermediate rates on the basis of the rate prescribed," but merely applied that rate to all intermediate points where it would result in a reduction of the former rate. In so doing they extended the \$3.60 rate to points as far east as Moqui, which is 312 miles from Mesa. After this proceeding was instituted the rates shown in column "B" of the above table were published and are now in effect. Column "C" shows the rates we are asked to establish. Complainant contends that the existing group adjustment should be broken up and rates established to all the points on a mileage basis. The proposed rates are based upon the rate of \$3.60 established by the Commission for the two-line haul to Mesa. A differential of 55 cents per ton is suggested to represent the 15-mile

28 I. C. C.

No. 5281  
**ARIZONA CORPORATION**  
v.  
**ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY**

No. 5281 (Sub)  
**SAME**  
v.  
**ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY**  
ET AL.

*Submitted April 8, 1913. Do*

**Rates for the transportation of coal in carload lots from various points in Arizona found unreasonable. Request for the future.**

**W. P. Geary and F. A. Jones for Arizona**  
**Robert Dunlap and James L. Colman**  
**Santa Fe Railway Company.**

**C. W. Durbrow, E. S. Ives, H. A. Scott**  
**for Southern Pacific Company and Arizona**  
**Company.**

**Hawkins & Franklin and Charles H. B.**  
**Western Railroad Company; Morenci Southern**  
**and Arizona & New Mexico Railway Company.**

**REPORT OF THE COMMISSION**

**BY THE COMMISSION:**

The complainant in these cases assails as unreasonable the carload rates on coal and slack from Gallup to the Atchison, Topeka & Santa Fe Railway along the Arizona-New Mexico state line, to practically all points in Arizona.

In No. 5281 the petition, filed October 16, 1912, is on coal and slack from Gallup to points on the Arizona, as to which the rates prior to February 1, 1912, were \$1.00 per net ton, and the rates we are asked to establish are per net ton in the table following.

traffic is light, and there is very little local business to haul water many miles for use in its engines. If the equipment used for this traffic is returned to points to which there is a regular movement of coal (Flagstaff, Williams, Ash Fork, Seligman, between Fields and Kingman), and Kingman. Points are both irregular and infrequent. It is on a mileage basis were prescribed it would necessitate rates from all other mines on the Santa Fe system. In record we find no good reason for any material grouping or for any reduction in the rates eastward. We are of opinion and find that the rates to the east are unreasonable. We are further of the opinion that the rates, in cents per net ton, should not

from Gallup to—	Coal.	Slack.
.....	230	200
.....	230	220
.....	275	240
.....	290	245
.....	310	265
.....	330	285
.....	355	305
.....	370	315
.....	375	320
.....	380	325
.....	390	335

No. 1, filed October 28, 1912, involves rates from Gallup to points on the Southern Pacific, Santa Fe, and other lines, which moves via Deming, New Mexico. The table shows, in cents per net ton, the present rates and rates sought for by complainant to representative points:

Description of movement.	Distance.	Present rates.		Rates sought.	
		Coal.	Slack.	Coal.	Slack.
S. F.; E. P. & N. M.	Miles. 546	Cents. 477	417	390	345
.....	582	522	.....	380	365
.....	575	503	443	375	360
.....	593	583	523	385	370
S. F.; S. P.; S. M.	520	510	450	345	330
S. F.; S. P.	667	655	.....	350	345
S. F.; S. P.	624	560	.....	400	385
.....	634	585	.....	405	390
.....	500	485	.....	350	335
.....	565	485	.....	370	355
.....	614	485	.....	365	350
.....	700	585	.....	325	310
.....	865	585	.....	405	390
S. F.; E. P. & N. M.	563	510	450	370	355

haul via the Arizona Eastern beyond Phoenix, and on the basis of \$3.05 per ton to Phoenix complainant has computed a scale of distance rates which it is claimed should be applied to the points embraced in the above table as reasonable rates for the transportation herein involved. Pertinent portions of the record in the *Maricopa County Commercial Club case, supra*, have been stipulated into this case.

The rates proposed by complainant would yield ton-mile earnings for the distances stated as shown in the next following table:

Distance.	Earnings.	Distance.	Earnings.
<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
100	10.4	400	7.1
200	8.7	500	6.7
300	7.8	600	6.4

Complainant compares the proposed rates with the Santa Fe Company's rate on coal from Trinidad, Colo., to New Mexico points, and shows that for a haul of 405 miles from Trinidad the rate is the same as that proposed in this case for a like distance. As to most other distances, however, the proposed rates are lower. Further comparisons, apparently favorable to complainant's contentions, are made with coal rates from producing to consuming points in Montana, the Dakotas, Wyoming, Idaho, and other northwestern states. It was also shown that the proposed rates are higher than either the Arizona or Texas scale of rates for similar distances. Defendant maintains a proportional rate of \$2.50 on slack from Gallup to Jerome Junction, applicable to traffic destined to points on the United Verde & Pacific Railway. A rate of \$5.15 is maintained on coal from Gallup to San Francisco, Cal., which involves a haul of over 1,000 miles. It is insisted by complainant that lower rates in Arizona than are now in effect are a necessity, as there is very little wood available in the state, and such as can be had is expensive. Attention is called to the fact that the general grade of the line of the Santa Fe from Gallup to Arizona points is downward, Gallup being 6,498 feet above sea level, and Phoenix, the southern terminus of the Prescott & Phoenix branch, 1,200 feet above sea level.

The Santa Fe Company, the sole defendant in this petition, contends that the rate of \$3.60 to Mesa is too low. It objects to the establishment of a mileage basis and states that commercial conditions warrant a blanket adjustment. It insists that the comparisons offered by complainant are unfair for the reason that the circumstances and conditions which surround the movement of the traffic are dissimilar. While the general grade of its line is downward from Gallup, it is shown that several steep grades are encountered. Wash-outs sometimes occur and it is necessary at times to combat snow.

Population is sparse, traffic is light, and there is very little local business. Defendant has to haul water many miles for use in its engines and shows that most of the equipment used for this traffic is returned empty. The only points to which there is a regular movement of coal are Holbrook, Winslow, Flagstaff, Williams, Ash Fork, Seligman, Hackberry (situated between Fields and Kingman), and Kingman. Shipments to other points are both irregular and infrequent. It is claimed that if a strictly mileage basis were prescribed it would necessitate a revision of rates from all other mines on the Santa Fe system.

Upon the facts of record we find no good reason for any material change in the present grouping or for any reduction in the rates east of Holbrook; but we are of opinion and find that the rates to the other points involved are unreasonable. We are further of the opinion that for the future the rates, in cents per net ton, should not exceed the following:

From Gallup to—	Coal.	Slack.
Pensance to Winslow.....	230	200
Moqui to Flagstaff.....	250	220
Riordan to Williams.....	275	240
Supai to Ash Fork.....	290	265
Cinder Pit to Jerome Junction.....	310	265
Granite to Phoenix.....	330	285
Crown King Branch points.....	355	305
Parker Branch points.....	370	315
Pineveta to Seligman.....	305	270
Chino to Kingman.....	320	280
Rock Crusher to Topock.....	330	285

The petition in Sub-No. 1, filed October 28, 1912, involves rates on lump and slack coal from Gallup to points on the Southern Pacific, El Paso & Southwestern, and other lines, which moves via Deming, N. Mex. The following table shows, in cents per net ton, the present rates and those asked for by complainant to representative points:

From Gallup to—	Route of movement.	Distance. <i>Miles.</i>	Present rates.		Rates sought.	
			Coal.	Slack.	Coal.	Slack.
Douglas.....	A., T. & S. F.; E. P. & S. W.	546	<i>Cents.</i> 477	<i>Cents.</i> 417	<i>Cents.</i> 360	<i>Cents.</i> 345
Courtland.....	do.....	582	522	.....	380	365
Blakes and Naco.....	do.....	575	503	443	375	360
Tombstone.....	do.....	563	583	523	385	370
Cannon.....	A. T. & S. F.; S. P.; A. & N. M.	520	510	450	345	330
Silver Bell.....	A. T. & S. F.; S. P.; A. S.	667	655	.....	360	345
Globe.....	A. T. & S. F.; S. P.; A. E.	624	560	.....	400	385
Miami.....	do.....	634	585	.....	405	390
Bowie.....	A., T. & S. F.; S. P.	500	485	.....	350	335
Benson.....	do.....	565	485	.....	370	355
Tucson.....	do.....	614	485	.....	365	350
Maricopa.....	do.....	700	585	.....	325	310
Yuma.....	do.....	865	585	.....	405	390
Morenci.....	A. T. & S. F.; E. P. & S. W.; A. & N. M.; M. S.	563	510	450	370	355

The rates we are asked to establish are predicated on substantially the same basis as those asked for in the preceding petition. Complainant also asks that a through route and joint rate via Phoenix and the Arizona Eastern Railroad be established for traffic to Southern Pacific points, as the distance by such route is less than by Deming to certain points. Defendants contend, however, that the difference in mileage is offset by differences in transportation conditions, and state that practically no coal moves to points west of Tucson. On the main issue involved the evidence is substantially similar to that in No. 5281. The additional parties defendant call attention to the sparse population, light traffic, and lack of local business. Douglas, Courtland, Bisbee, Naco, Tombstone, and Benson are practically the only points to which there is a substantial movement of coal, and defendants strongly object to any disturbance of the blanket adjustment which now obtains. As the Morenci Southern is a narrow-gauge line, it is necessary to transfer the contents of all cars at the junction point. The record shows that this road was operated at a loss last year. It is pointed out by defendants that the rates here involved are in many cases for hauls of three or four lines, and as the \$3.60 rate prescribed by this Commission to Mesa was for a two-line haul via another route, they insist that it is not a proper measure for these rates.

We are not convinced that conditions surrounding the transportation of coal via defendants' lines to the points here in question, except on the Morenci Southern, are substantially different from those which obtain in connection with transportation of coal to Mesa. Upon consideration of all the facts and circumstances of record we are of opinion and find that the present rates are unreasonable to the extent that they exceed rates, in cents per ton, as set forth in the following table, which rates will be prescribed for the future:

*Rates in cents per net ton.*

From Gallup to—	Lump coal.	Slack.
Solomon.....	420	370
Safford.....	430	380
Thatcher to Pima.....	450	400
Fort Thomas to Globe.....	480	430
Miami.....	500	445
Bowie.....	400	350
Wilcox to Benson.....	430	380
Pantano to Tucson.....	450	400
Sahuarita to Maricopa.....	475	425
Estrella to Yuma.....	500	445
Apache to Douglas.....	400	350
Small to Courtland.....	450	400
Salome to Benson.....	430	380
Bisbee and Naco.....	430	380
Tombstone.....	500	445
Chifton.....	435	385
Silver Bell.....	550	480
Morenci.....	475	425

Orders will be entered in accordance with the foregoing conclusions.

28 I. C. C.

No. 5560.

TOWN OF PELHAM, GA.,

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

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No. 5561.

CITY OF CAMILLA, GA.,

v.

SAME.

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No. 5562.

CITY OF SYLVESTER, GA.,

v.

SAME.

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*Submitted September 27, 1913. Decided October 13, 1913.*

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Upon complaints alleging undue discrimination in the adjustment of rates to and from Pelham, Camilla, and Sylvester, Ga., and undue preference to certain south Georgia basing points; *Held*, That there is no substantial dissimilarity of circumstances or conditions affecting the transportation to Pelham and Camilla as compared with such basing points as Thomasville and Albany, Ga., nor in the transportation to Sylvester, as compared with Albany and Tifton, Ga. The discrimination found to be undue and defendants required to remove the same.

*Roscoe Luke, W. C. Snodgrass, and W. I. MacIntyre* for complainants.

*R. Walton Moore and Frank W. Gwathmey* for Atlantic Coast Line Railroad Company; Georgia Southern & Florida Railroad Company; Seaboard Air Line Railway; Central of Georgia Railway Company; Atlanta & West Point Railroad Company; Mobile & Ohio Railroad Company; Illinois Central Railroad Company; Ocean Steamship Company of Savannah; and Southern Railway Company.

*N. W. Proctor* for Louisville & Nashville Railroad Company.

*Augustus Pope* for Georgia & Florida Railway.

#### REPORT OF THE COMMISSION.

*CLARK, Chairman:*

These cases present identical issues, they were heard together, and will be disposed of in one report. Complainants are municipal corporations of the state of Georgia.



The petitions each allege, generally, that defendants violate the act to regulate commerce; (1) by charging higher freight rates, both class and commodity, from interstate points to Pelham, Camilla, and Sylvester than they charge to Ashburn, Albany, Tifton, Thomasville, Quitman, Valdosta, Moultrie, and Fitzgerald, near-by competitive points in south Georgia, which will hereinafter be referred to as the basing points; (2) by charging higher freight rates from the complaining municipalities to Jacksonville, Fla.; Birmingham and Montgomery, Ala.; Nashville and Chattanooga, Tenn., and other competitive points, than they charge to the same points from the basing points; (3) that in many instances defendants fail to publish commodity rates to the complaining towns such as are enjoyed by the basing points mentioned.

As illustrative of the discriminatory character of the rates referred to more generally in allegation (1), complainants specify the water-and-rail class rates in effect from eastern cities and the all-rail rates from the Ohio River crossings and the Virginia cities; also the rates on coal from Birmingham and on flour from Chattanooga to the complaining places as compared with the rates from the same points to the basing points.

The only rates referred to as illustrative of the general allegation in (2) are those on cottonseed and cottonseed products from Pelham, Camilla, and Sylvester to Jacksonville, Birmingham, Montgomery, Nashville, Chattanooga, and other competitive points in Florida, Alabama, and Tennessee, which are alleged to be higher than from the basing points.

The basis of each complaint is alleged undue discrimination against complainants and undue preference of the basing points, with which the relative adjustment of class rates is as given in the table following; all-rail class rates in cents per 100 pounds, except class F which is in cents per barrel:

From Louisville, Ky. (as typical of Ohio River crossings), to—	1	2	3	4	5	6	A	B	C	D	E	H	F
Ashburn, Ga. ....													
Tifton, Ga. ....													
Thomasville, Ga. ....													
Quitman, Ga. ....	143	124	110	90	74	59	44	45	35	31	70	70	63
Valdosta, Ga. ....													
Moultrie, Ga. ....													
Fitzgerald, Ga. ....													
Albany, Ga. ....	123	107	96	78	65	52	37	42	33	29	60	60	58

Through rates from the Ohio River crossings to the complaining points are constructed by the addition of prescribed arbitraries to the rates to certain of the basing points, the through rates to Pelham, Camilla, and Sylvester being made by the addition of the following

arbitrariness to the rates to Thomasville, Albany, and Tifton, in cents per 100 pounds, except class F which is in cents per barrel:

	1	2	3	4	5	6	A	B	C	D	E	H	F
To Pelham from—													
Thomasville, Ga.....	3	3	2	2	2	2	2	4	2	2	4	4	4
Albany, Ga.....	31	28	25	23	18	14	14	13	8	7½	18	23	16½
To Camilla from—													
Thomasville, Ga.....	3	3	2	2	2	2	2	4	2	2	4	4	4
Albany, Ga.....	26	24	22	19	16	13	13	12	7½	6½	16	19	15
To Sylvester from—													
Tifton, Ga.....	3	3	2	2	2	2	2	4	2	2	4	4	4
Albany, Ga.....	24	22	19	17	14	12	12	11	7	6	14	17	14

While through rates to Pelham, Camilla, and Sylvester are constructed by use of the differentials stated, the latter are published in a joint agents' tariff, and the through rates thus made are joint through rates.

Water-and-rail class rates via Virginia ports or Savannah, Ga., in cents per 100 pounds, except class F, which is per barrel.

From New York (as typical eastern city) to—	1	2	3	4	5	6	A	B	C	D	E	H	F
Ashburn, Ga.....													
Albany, Ga.....													
Tifton, Ga.....													
Thomasville, Ga.....	105	93	83	68	56	44	36	48	40	39	53	60	74
Quitman, Ga.....													
Valdosta, Ga.....													
Moultrie, Ga.....													
Fitzgerald, Ga.....													
Pelham, Ga.....	114	102	88	73	60	48	33	48	40	39	64	66	78
Sylvester, Ga.....													
Camilla, Ga.....													

<sup>1</sup> These rates apply to all the basing points with the following exceptions: To Valdosta the class-C rate is 36 cents; class D 35 cents; and class F 65 cents. To Moultrie the class-B rate is 47 cents; class C 21 cents; class D 19 cents; and class F 56 cents.

From Norfolk and other Virginia cities to—	1	2	3	4	5	6	A	B	C	D	E	H	F
Ashburn, Ga.....													
Albany, Ga.....													
Tifton, Ga.....													
Thomasville, Ga.....	96	87	78	63	52	41	34	45	37	36	55	57	72
Quitman, Ga.....													
Valdosta, Ga.....													
Moultrie, Ga.....													
Fitzgerald, Ga.....													
Pelham, Ga.....	124	111	100	82	68	54	47	55	36	35	70	76	71
Camilla, Ga.....	122	109	97	80	63	53	46	50	34	33	66	74	68
Sylvester, Ga.....													

<sup>1</sup> To Moultrie, class C 35 cents, class D 33½ cents, and class F 71 cents. It is noted that the class C, D, and F rates from Virginia cities are higher than the corresponding class rates from eastern cities. From Virginia cities to Valdosta the Southern Railway and Norfolk & Western Railway tariffs name Class C 38 cents, class D 32 cents, and class F 64 cents, while the tariffs of the Atlantic Coast Line and Seaboard Air Line name 36 cents, 35 cents, and 65 cents, respectively.

<sup>2</sup> To Camilla, class D 35½ cents.

Thomasville, Tifton, and Albany, three of the basing points referred to, are at the vertices of an irregular triangle, Thomasville at the south being the apex, while the base at the north is formed by the line of the Atlantic Coast Line extending westerly through

Tifton to Albany. The distance over the east side-line from Thomasville to Tifton, formed by the Atlanta, Birmingham & Atlantic, is 56 miles. The distance over the base line from Tifton to Albany is 40 miles, and the west side-line from Albany to the apex, Thomasville, also formed by the Atlantic Coast Line, is 58 miles.

Pelham is situated on the Atlantic Coast Line forming the west side of this triangle, 24 miles northwest from Thomasville and 34 miles south of Albany. It is the southern terminus of the Flint River & Northeastern Railroad, which extends northeasterly to Doe Run, Ga., a distance of 24 miles, and connects with the Georgia Northern Railway at Ticknor, Ga.

Camilla occupies, with respect to the basing points, the same relative location as Pelham, being 8 or 10 miles north thereof on the Atlantic Coast Line and between Thomasville and Albany. It is the southern terminus of the Gulf Line Railway extending northeasterly to Hawkinsville and connecting with the Georgia Southern & Florida Railway at Ashburn. Camilla is 52 miles southwest of Ashburn, 24 miles south of Albany, and 34 miles northwest from Thomasville.

Sylvester is on the base line of the triangle between Tifton and Albany and is reached by the Gulf Line Railway, via which line it is 17 miles southwest of Ashburn. On the Atlantic Coast Line it is 20 miles east of Albany and 21 miles west of Tifton where the Atlantic Coast Line connects with the Georgia Southern & Florida and Atlanta, Birmingham & Atlantic roads.

The reasonableness *per se* of the rates involved is not raised in these complaints, nor do complainants invoke the restrictions of the fourth section. Defendants' pending applications for relief from the operation of that section are before us in another proceeding and no finding in respect to that feature of the rate situation will be made in this report.

The question to be considered, therefore, is one of alleged unjust discrimination and undue preference in rates to and from the basing points as compared with rates to and from the complaining municipalities.

Pelham and Camilla are in Mitchell county, Ga., which, with a population of 22,114 in 1910, is largely tributary to and dependent upon them for local and retail supplies. These towns are favorably located in a productive agricultural district. Local enterprise has established and maintains a variety of industrial enterprises, such as a cotton factory, an ice plant, sawmills, fertilizer plants, oil mills, ginneries, and a compress.

Sylvester is the county seat of Worth county, the population of which in 1910 was 19,147. In regard to natural and agricultural

resources and industrial enterprises its situation and conditions are substantially similar to those of Camilla and Pelham.

From the country surrounding these three towns several hundred carloads of melons are shipped each year. Sylvester and Camilla each market annually about 10,000 bales of cotton, while Pelham markets about 18,000 bales. One-seventh of the cotton crop of Georgia, or about 450,000 bales, is said to be produced within a radius of 50 miles of Pelham. Each of these places is also the market point for other agricultural commodities raised in the surrounding country.

It is admitted that the towns are growing rapidly and are prosperous, but it is contended that by virtue of their location they are entitled to compete for, and participate in, the local trade of the surrounding country; that their growth and prosperity are linked with, and dependent upon, their ability to participate in the local trade in their respective communities and to supply the country stores in the interior, and that they are greatly handicapped by the discriminatory rate adjustment which gives material advantages to the basing points.

At the hearing complainants specifically stated that they did not ask for any reduction in rates. They were permitted to amend their respective complaints by withdrawing the allegations as to rates on coal from the Birmingham district, on flour from Chattanooga, and on cottonseed and cottonseed products to the several interstate points named. The complaints were further amended so as to ask that rates on all classes and commodities to and from Pelham and Camilla on the one hand and eastern and Virginia cities on the other be made no higher than the rates to and from Albany, and that rates to and from Ohio River crossings and the west be made no higher to and from Pelham and Camilla than those contemporaneously in force to and from Thomasville. In respect to Sylvester the amendment asks for rates no higher than the Albany rates to and from the east and no higher than the Tifton rates to and from the Ohio River crossings and the west.

In view of the amendments permitted, and to which no objection is raised, defendants gave notice that they would rely on the evidence offered in the case of *Mayor and Council of Boston, Ga., v. A. C. L. R. R. Co.*, 24 I. C. C., 50. In that case the complaint alleged that Boston, which is situated on the Atlantic Coast Line about midway between Quitman and Thomasville, was unduly prejudiced by the adjustment of rates which gave undue preference to the latter points. We there held that the adjustment of rates complained of unduly prejudiced Boston, its merchants and its traffic, and unduly preferred Quitman and Thomasville, and made an order requiring the removal of the discrimination.

The situation at Pelham, Camilla, and Sylvester as developed in this proceeding presents the same question of adjustment of rates in this territory that has been the subject of complaint and investigation in the *Boston case, supra*, and other cases.

The complaining places are all in active competition with the near-by basing points and are adversely affected by the advantages which the latter enjoy in the matter of freight rates.

From a consideration of all the facts of record we do not find any substantial dissimilarity of circumstances or conditions affecting the transportation to and from Pelham and Camilla as compared with Thomasville and Albany, nor in the transportation to and from Sylvester as compared with Albany and Tifton upon either classes or commodities to and from the points here involved.

We therefore find that the adjustment complained of is unduly prejudicial to Pelham and Camilla and unduly preferential to Thomasville and Albany. Defendants will be required to cease and desist from this discrimination and for the future to apply to and from eastern cities water-and-rail rates, and to and from Virginia cities all-rail rates, to and from Pelham and Camilla not higher than those contemporaneously maintained by them to and from Albany; and on traffic to and from the Ohio River crossings and the west, rates not higher to and from Pelham and Camilla than those contemporaneously maintained to and from Thomasville.

We further find that the adjustment complained of is unduly prejudicial to Sylvester and unduly prefers Albany and Tifton. Defendants will be required to cease and desist from this discrimination and for the future to apply to and from the Ohio River crossings and the west to and from Sylvester rates not higher than those contemporaneously maintained and applied to and from Tifton; and to apply to and from Sylvester on traffic to and from the eastern cities water-and-rail rates, and to and from the Virginia cities all-rail rates, not higher than those contemporaneously maintained to and from Albany.

An order will be entered in accordance with these findings. For the reasons stated in *City of Montezuma v. C. of Ga. Ry. Co., ante*, pages 280, 284, the effective date of the order will be set as February 1, 1914.

28 I. C. C.

No. 5637.

UNITED REFRIGERATOR & ICE MACHINE COMPANY  
v.  
CHICAGO & NORTH WESTERN RAILWAY COMPANY  
ET AL.

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*Submitted August 28, 1913. Decided October 10, 1913.*

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Shipment from Kenosha, Wis., to San Francisco, Cal., consisting of three ammonia compressors, condensers, and receivers, with oil traps and other appurtenances, held to have been entitled to the less-than-carload rate provided for machinery, n. o. s., k. d. in pieces. Reparation awarded.

*O. M. Rogers* for complainant.

*R. H. Widdicombe* for Chicago & North Western Railway Company.

*J. L. Coleman* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation with principal place of business at Kenosha, Wis. Its petition, filed March 17, 1913, alleges that defendants have charged an unjust and unreasonable rate for the transportation from Kenosha, Wis., to San Francisco, Cal., of a shipment made February 17, 1911, and described in the bill of lading as 3 coils of iron pipe, 3 iron pipes, 2 castings, 3 boxes of refrigerating machinery, and 2 boxes of fittings. The claim was first filed with the Commission May 11, 1912.

In May, 1911, complainant, as a reorganization and enlargement of the Racine Refrigerator & Ice Machine Company, purchased the business of the latter and is now the holder of all of its assets. The shipment described in the petition was forwarded by the Racine Refrigerator & Ice Machine Company and was waybilled in accordance with the bill of lading with total freight charges of \$239.42. En route it was inspected, and as a result, changes were made in the description of the articles, and charges were finally collected, as follows:

Three boxes of refrigerator cooling machines, 4,245 pounds, at \$4.50 per 100 pounds, 1½ times first class, \$191.03; 2 boxes of iron valves, 260 pounds, at \$1.50 per 100 pounds, commodity rate, \$3.90; 3 coils, 1,405 pounds, at \$2.20 per 100 pounds, third class, \$30.91; 3 gas cylinders, 505 pounds, at \$3 per 100 pounds, first class, \$15.15; 2 iron valves, 250 pounds, at \$1.50 per 100 pounds, commodity rate, \$3.75; or a total of \$244.74. Complainant contends that the carriers erred in applying

these rates for the reason that no refrigerator cooling machines were shipped and that in consequence it has been overcharged.

As tendered for transportation the articles comprised one shipment, covered by a single bill of lading and consigned to one consignee, the Western Butchers' Supply Company, at one destination, San Francisco, Cal. It included the essential parts of three complete units or refrigerating plants intended for subsequent sale by complainant's jobbing house. As designated by complainant's catalogues the machines are known as "united refrigerating machines," and they are pictured connected with "united coolers." These catalogues set forth:

Our refrigerating plants are divided into two component divisions, termed high and low side, so named because of the relative pressures maintained in the plant. The high side is composed of the compressor, condenser, liquid-ammonia receiver, oil and scale traps, and the piping and fittings necessary to connect these together.

The shipment in controversy consisted of three complete "high sides." The compressor is the basic machine used in refrigerating work. Its function is to circulate ammonia through brine coils and brine tanks to reduce the brine to a low temperature. The condenser is a long coil of double pipes; that is, of 2-inch or 3-inch pipes, within which are smaller pipes with spaces between the two for the circulation of water. Its function is to reduce expanded gas to liquid form. The receiver is a pipe or cylinder approximately 6 inches in diameter, placed at the bottom of the condenser, to receive and hold under pressure ammonia when condensed into liquid form. The "high side" units are not generally known as "refrigerator cooling machines."

At the time of the movement the western classification, which governed, provided:

	Less than carloads.	Carloads.
Refrigerating machinery, min. wt. 24,000 lbs. (With an enumeration of many separate parts allowed to be loaded therewith in mixed carloads.)	.....	Class A.
Refrigerator cooling machines.....	1½ times first class.....	
Machinery, n. o. s.:		
Completely k. d. and boxed.....	2.....	} Class A, min. wt. 24,000 pounds.
In frame or set up.....	1½.....	
K. d., in pieces.....	1.....	

It will be observed that no specific less-than-carload rating was provided for refrigerating machinery, except as such machinery might be included under machinery, n. o. s.; that no carload rating was provided for refrigerator cooling machines; and that the rating provided for such machines less than carload, however packed, was the same as for machinery, n. o. s., less than carload, in frame or set up; i. e., 1½ times first class.

The classification contained no definition of the terms "k. d.," "completely k. d.," or "k. d. in pieces."

The petition makes no direct attack on the reasonableness of the classification provisions or upon the measure of the class rates, and, while complainant on hearing offered testimony in these respects, this testimony is not such as to justify a finding that either the classification ratings or the rates themselves are unjust or unreasonable.

We are unable to agree with respondents that the shipment consisted of refrigerator cooling machines and could not have been anything else. The machines were undoubtedly for the purpose of producing refrigeration and, since there was no specific less-than-carload rating for refrigerator machines or machinery, were properly ratable as machinery, n. o. s.

It follows, we think, that the articles here in issue were subject to the classification rating for complete machines or machinery, and it only remains to be determined whether they were completely knocked down and boxed and subject to the second-class rating; knocked down, in pieces, entitling them to the first-class rating; or ratable as in frames or set up,  $1\frac{1}{2}$  times first class. It is of record that the coils and pipes known as the condensers and receivers were detached from the compressors, but the condenser pipes were not separated one from the other, and neither the condensers nor the receivers were boxed or crated. The oil traps were detached, but were not boxed or crated. The valves and fittings were all detached and shipped in boxes, and the compressors or basic machines were bolted to skids or inclosed in rough crates bolted to the skids.

As before stated, the tariff does not define "knocked down in pieces." There can be no question that the shipment involved was shipped in pieces. It does not appear that it was shipped in as many pieces as it might have been had the machine been taken completely apart. We do not conceive that the term means that a machine must be severed into all its component parts and these parts shipped as separate pieces in order to make applicable the first-class rate to the shipment. Under the facts shown of record we are of the opinion that the shipment under the classification should have taken the rate applicable to "Machinery, n. o. s., k. d. in pieces," and that any charge in excess of the first-class rate was unlawful. We further find that complainant made the shipment, which weighed in the aggregate 6,665 pounds; that at the first-class rate of \$3 per 100 pounds in effect at the time, the charges would have been \$199.95; that the charges collected were \$244.74; and that complainant was damaged by the collection of the charges herein found unlawful in the sum of \$44.79, with interest from March 13, 1911. An order will be entered accordingly.



No. 5425.  
NATIONAL COAL COMPANY  
v.  
BALTIMORE & OHIO RAILROAD COMPANY.

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*Submitted October 21, 1913. Decided November 4, 1913.*

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A carrier rated a coal mine and distributed cars to it strictly in accordance with established rules, fairly adopted after consultation with and approval by mine operators; *Held*, That such carrier can not be held guilty of undue discrimination against such mine on a showing that the shipper's commercial misfortunes in the months used, under the rules, to determine the rating of the mine, operated to reduce such rating. Complaint dismissed.

*Alvin V. Baird* for petitioner.

*William Ainsworth Parker* for respondent.

REPORT OF THE COMMISSION.

*MARBLE, Commissioner:*

This proceeding was brought by the petitioner to secure a modification of the system by which coal mines were formerly rated by the Baltimore & Ohio Railroad for purposes of car distribution in times of car shortage, and also to secure compensation for damages alleged to have been sustained during the months of September, October, and November, 1912, by reason of discriminations in car distribution.

The petitioner operates a mine known as Little Kate No. 2, situated in Guernsey county, Ohio, on the eastern Ohio branch of the Baltimore & Ohio Railroad. This mine is alleged to have a production capacity of from 1,500 to 1,600 tons of coal per day. Previous to March, 1912, its rating for car supply was 38 cars per day. From September 1, 1912, until September 19, 1912, this rating was fixed at 19 cars per day. On the latter date it was raised to 21 cars per day. On November 9, 1912, it was still further increased to 50 cars per day, which figure is not criticized by the petitioner.

The petitioner stated at the hearing, and also at the argument, that the system of car distribution of which it complained has been so far modified by the respondent as to be entirely satisfactory. It continues in its demand, however, for reparation for the injuries it claims to have suffered between September 1, 1912, and November 9, 1912.

The method of mine rating which resulted in the allotment of 19 cars per day in the period beginning September 1, 1912, was established in October, 1910. It appears that the respondent, through its general superintendent of transportation, called for the views of the coal-mine operators served by it. A meeting was held at Baltimore, at which the petitioner here was represented. The method adopted for estimating the equitable relative car supply for each mine resulted from this conference and appears to have been generally acceptable to the shippers, including the petitioner. By this method it was proposed that each year the railroad company should establish the ratings of each mine served by it upon the basis of the month within a period of full car supply showing the highest average of daily shipments. In the case of the Baltimore & Ohio the period of full car supply includes the months of April, May, June, and July.

It appears that in April, 1912, all mines in the district in which petitioner's mine is located were closed. During May, June, July, and August of the same year there were local labor troubles which operated to restrict production. In anticipation of these troubles petitioner's customers laid in large stocks of coal in March, 1912, still further reducing its possible market during the summer. Petitioner ships no coal to the lakes in the summer months, its product not being susceptible of the frequent rehandlings which are a feature of rail-and-lake transportation. The net result of these labor and commercial influences was that the shipments made by complainant's mine during the period of full car supply in the spring and summer of 1912 were abnormally small. As a consequence the rating given the mine based on the month of largest shipments in this period was less than that given for the previous year. It is not contended that respondent was intentionally unfair in its adoption of the method of mine rating above set forth or in any subsequent action thereunder. The disadvantage to petitioner resulted from the fact that the general rule of mine rating adopted, when applied to the abnormally small shipments which it made during the summer of 1912, resulted in a rating for car supply which was not commensurate with its necessities in the period beginning with September 1, 1912.

It fully appears that upon a showing of the facts as above stated the rating of petitioner's mine was increased by the respondent. The increase to 21 cars per day on September 19, 1912, and the further increase to 50 cars per day on November 9, 1912, are admitted by complainant to be evidence of respondent's desire to deal fairly with it. It nevertheless asks that reparation be awarded for losses of profits caused by its failure to receive sufficient cars during the period beginning with September 1 to enable it to work its mine as many hours per day as other mines were worked in the same general territory.

The investigations of the Commission have shown that in past years there have been great injustices in the apportionment of coal cars in times of car shortage. These injustices have arisen largely, if not entirely, by reason of the assumption by officials in control of car supply of discretion to apportion such cars without regard to any general rule. In a number of well-considered reports the Commission has laid down the principle that in times of failure of car supply the available cars should be apportioned upon a fair and nondiscriminatory basis ascertained in advance by reference to some general scheme of rating which should take into account not only the physical capacity of each mine to make shipments, but also the commercial capacity of each mine to find a market for its coal. It is the view of the Commission that carriers which in good faith attempt so to distribute cars can not be held to be guilty of unduly discriminating against shippers whose commercial misfortunes operate to reduce their ratings. If carriers were to be held guilty of undue discrimination in such a case, they could not safely trust any general scheme of car distribution and would be at once brought back to the evil system, now largely abandoned, by which those in control of car supply distributed available equipment not according to a general rule, but according to their own unguided discretion.

While the basis of mine rating adopted by this carrier proved to be defective, it fully appears that it was adopted in good faith and was submitted to the mine operators to be affected, including the petitioner, for their approval. It further appears that upon notice being brought to the carrier of the extraordinary conditions confronting complainant's mine in the summer of 1912 it modified its rating with reasonable promptness.

It would be difficult from the record to determine the amount of loss caused to the petitioner by its failure to receive full car supply from September 1 to November 9, 1912. In the view here taken, however, it is not necessary to discuss these difficulties.

It is the view of the Commission that the respondent has not been shown to have made an undue discrimination against petitioner.

The complaint will be dismissed.

No. 5487.

MAYOR AND COUNCIL OF DOUGLAS, GA., ET AL.

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILROAD  
COMPANY ET AL.

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*Submitted September 25, 1913. Decided November 4, 1913.*

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The present adjustment of rates found to be unjustly discriminatory against Douglas, Ga., and unduly preferential to Fitzgerald and other southern Georgia points.

*Roscoe Luke* and *W. C. Snodgrass* for complainants.

*N. M. Proctor* for Louisville & Nashville Railroad Company.

*Frank W. Gwathmey* for Georgia Southern & Florida Railway Company, Atlanta & West Point Railroad Company, Mobile & Ohio Railroad Company, Illinois Central Railroad Company, and Ocean Steamship Company of Savannah.

*Augustus Pope* for Georgia & Florida Railway.

#### REPORT OF THE COMMISSION.

##### **MEYER, Commissioner:**

The complaint in this proceeding is that the defendants charge higher freight rates, both class and commodity, from territory and points of origin without the state of Georgia to Douglas than those charged to Fitzgerald, Valdosta, Quitman, Thomasville, Moultrie, Tifton, and Waycross, all within the state of Georgia. It is alleged that the circumstances and conditions affecting the transportation of freight at Douglas are substantially similar to those existing at the other places named, and that consequently the established rates constitute unjust prejudice and discrimination against the city of Douglas. It is further alleged that the defendants discriminate against the complainants by failing in many instances to publish commodity rates from points without the state of Georgia to the city of Douglas, such as are enjoyed by other points within the state of Georgia under substantially similar conditions.

As illustrative of the alleged discrimination complainants specify class and commodity rates from the territories known as eastern cities, Virginia cities, and the Ohio River gateways, from Mississippi River points such as New Orleans, Vicksburg, and Memphis, from Mobile and Pensacola, from St. Louis, and from Nashville. The rates between the points named are shown in the table following.

## Class rates per 100 pounds.

From—	To Douglas.						To Tifton, Fitzgerald, Quitman, Valdosta, and Thomasville.						To Waycross.					
	1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6
Philadelphia.....	\$1.18	\$1.03	\$0.87	\$0.69	\$0.53	\$0.39	\$1.00	\$0.89	\$0.80	\$0.66	\$0.54	\$0.42	\$1.00	\$0.87	\$0.73	\$0.59	\$0.46	\$0.33
New York.....																		
Franklin.....																		
Lynchburg.....																		
Richmond.....																		
Manchester.....																		
Norfolk.....	1.28	1.13	1.01	.84	.70	.55	.98	.87	.78	.63	.53	.41	.98	.87	.76	.61	.48	.35
Roanoke.....																		
Petersburg.....																		
Portsmouth.....																		
Suffolk.....																		
Cincinnati.....																		
Lexington.....																		
Louisville.....	1.51	1.30	1.19	1.06	.87	.69	1.43	1.24	1.10	.90	.74	.59	1.35	1.16	1.07	.90	.74	.59
Evansville.....																		
Paducah.....																		
Chicago.....																		
St. Louis.....	1.74	1.49	1.36	1.20	.97	.77	1.66	1.43	1.27	1.02	.84	.67	1.58	1.35	1.24	1.02	.84	.67
Memphis.....	1.47	1.26	1.15	1.04	.83	.66	1.39	1.20	1.06	.86	.70	.55	1.31	1.12	1.03	.86	.70	.55
Nashville.....	1.28	1.10	1.01	.88	.73	.58	1.10	.96	.85	.69	.57	.46	1.10	.96	.85	.69	.57	.46
New Orleans.....																		
Vicksburg.....	1.47	1.26	1.15	1.04	.83	.65	1.39	1.20	1.06	.86	.70	.55	1.31	1.12	1.03	.86	.70	.55
Mobile.....	1.37	1.16	1.06	.94	.78	.60	1.29	1.10	.96	.76	.65	.50	1.21	1.02	.93	.76	.65	.50
Pensacola.....	1.30	1.09	.98	.87	.74	.56	1.20	1.10	.96	.76	.65	.50	1.14	.96	.86	.76	.65	.50

The rates given to Douglas are those in effect at the time of the filing of the complaint. Since that time there has been a change, in that on July 1, 1918, the rates to Douglas from the Ohio gateways, St. Louis, Memphis, Nashville, New Orleans, Vicksburg, Mobile, and Pensacola were made 1 cent lower on the first three classes (M. P. Washburn's I. C. C. No. 92). The rates from New York and Philadelphia quoted in the complaint and stated above are the rates published by the Mallory line for traffic via the port of Brunswick, Ga., to the interior. The rates by this particular service are differential rates somewhat lower than the standard rates established by the Clyde line via the ports of Charleston and Jacksonville and the Ocean Steamship Company of Savannah and the Merchants & Miners Transportation Company via Savannah. The differences between the rates to Douglas and to Fitzgerald, etc., are, however, exactly the same in the standard rates as in the rate above quoted.

Complainants further specify the commodity rate on coal from Birmingham, Ala., to Douglas, which is alleged to be higher than the rates charged by the defendants on coal from Birmingham to Tifton, Fitzgerald, Quitman, Valdosta, Thomasville, and Waycross. They also specify the commodity rate on flour from Chattanooga, Tenn., to Douglas, which is alleged to be higher than the rates charged on flour from Chattanooga to the same points. The allegation as to the rates on flour from Chattanooga is correct. The rates, in cents per barrel, are: To Douglas, 53; Fitzgerald, Valdosta, Quitman, Thomasville, and Tifton, and to Waycross, 42. The allegation as to the rates on coal from Birmingham is, however, incorrect. The rates on coal, carloads, are in cents per ton as follows: To Douglas, 185; Fitzgerald, 185; Valdosta, 195; Quitman, 195; Thomasville, 185; Tifton, 185; and Waycross, 195. (Atlanta, Birmingham & Atlantic I. C. C. No. 458.) Douglas, it appears, has the same rate as Fitzgerald, Thomasville, and Tifton; and a lower rate than Valdosta, Quitman, and Waycross. The complaint as to discrimination in the coal rates is consequently dismissed. The disposition to be made of the complaint regarding the flour rates is indicated in our general conclusions stated below.

It will be noted of the rates quoted that, with the exception of the commodity rates on coal, Fitzgerald, Valdosta, Quitman, Thomasville, and Tifton are, as destinations, common points, and take the same rates from all the points of origin mentioned above. Waycross, however, is not in this group, and except in the cases of the class rates from Nashville and the commodity rate on flour from Chattanooga takes different rates, both with respect to the group, as well as with respect to Douglas.

Complainants contend that Douglas is entitled to Waycross rates from the west and Fitzgerald rates from the east. They do not in-

sist upon compliance with the fourth section, nor do they challenge the reasonableness of the rates, but rest simply upon the claim of illegal discrimination. The defendants point to the pendency of fourth section applications respecting the rates in this territory, and ask that decision on the present complaint be deferred until they shall be passed upon. While we believe that this complaint may now be decided independently of the general questions, it should be understood that our order here shall be without prejudice to any action this Commission may take in the general fourth section investigations.

Douglas is a point on the main line of the Georgia & Florida Railway at the junction with the main line of the Atlanta, Birmingham & Atlantic Railroad, which cross each other there at approximately right angles. The termini of the Georgia & Florida are Augusta, Ga., on the north, and Madison, Fla., on the south. The termini of the Atlanta, Birmingham & Atlantic are Atlanta, Ga., and Birmingham, Ala., on the west, and the port of Brunswick, Ga., on the east.

The location of the group of cities alleged to be preferred as against Douglas is as follows: Fitzgerald, the nearest and apparently Douglas's most active competitor, is 29 miles west of Douglas on the main line of the Atlanta, Birmingham & Atlantic. Waycross is east of Douglas—that is, in the direction of Brunswick—on the Atlantic Coast Line, at the junction of the main and two branch lines of the Coast Line and a branch line of the Atlanta, Birmingham & Atlantic, which runs between Waycross and Sessions, on the Atlanta, Birmingham & Atlantic. Waycross is 42 miles east of Douglas, via the Atlanta, Birmingham & Atlantic. It is 58 miles west of Brunswick, on the Atlantic Coast Line. Valdosta is 63 miles south of Douglas, on the main line of the Georgia & Florida at its junction with the Atlantic Coast Line. Thomasville is 44 miles west of Valdosta, on the Coast Line. Quitman is intermediate to Thomasville and Valdosta. Tifton is at the junction of the branch of the Atlanta, Birmingham & Atlantic, which runs north and south between Fitzgerald and Thomasville and the branch of the Coast Line which runs east and west between Brunswick and Albany. It is 55 miles north of Thomasville and 26 miles south of Fitzgerald.

As is indicated by the foregoing, Douglas in geographical situation closely resembles Fitzgerald, and, to a lesser degree, the other cities of the group to which Fitzgerald belongs. With respect to Waycross, however, its situation seems dissimilar, particularly because of the special position which Waycross occupies in its proximity to the port of Brunswick and the coast.

With respect to traffic from the eastern cities, via Brunswick, moving over the Atlanta, Birmingham & Atlantic Railroad, Douglas, which takes the higher rate, is intermediate to Fitzgerald. Douglas is also nearer Savannah than Fitzgerald. So with respect to traffic





Douglas, as indicated above, is served by two railroads, the Georgia & Florida and the Atlanta, Birmingham & Atlantic. The Georgia & Florida is intersected at short intervals by a large number of roads, through which junctions freight moves under through interstate rates both from the east and the west. Fitzgerald, nearest to Douglas of the common point group, is served by three railroads, the Atlanta, Birmingham & Atlantic, the Seaboard Air Line by branch between Fitzgerald and Abbeville on the main line, and the Ocilla Southern, which is a short road between Fitzgerald and Nashville, Ga., a point on the Georgia & Florida 35 miles south of Douglas.

In defense of the rates prevailing at Douglas the defendant carriers made some effort to show that Douglas is not at a serious disadvantage and can compete for the trade which is naturally within its field. It is evident, however, that the complainants' contention that the business of Douglas is unduly limited because of the advantage in rates enjoyed by its competitors is well founded, and that because of its disadvantage in rates it can not contend on equal terms with the rival common point cities for the trade which should lie in the common territory of all. For example, one of complainants' witnesses testified that though Nashville, Ga., is about equally distant from Douglas and Fitzgerald, Douglas has been practically excluded from Nashville by the competition from Fitzgerald. There is also testimony to the effect that producers and distributors in Douglas are at a material disadvantage because of the higher rates paid on raw materials and other commodities brought into Douglas.

Defendants adduce statistics of increase of population and other evidences of development in Douglas, to show that rates have not militated against its advancement and prosperity. It appears that the percentage of increase of population at Douglas in the decade 1900-1910 has been more than twice as great as at Fitzgerald, which shows the next highest rate of increase. This argument seems, for the present purposes, inconclusive. The Commission has said that the fact that the complainant is prosperous, although a matter to be considered, does not conclusively show that rates are not discriminatory. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.*, 16 I. C. C., 512, 519. One of the witnesses for the defendants, in speaking of the creditable rapid development of Douglas, observed that it had taken place under disadvantages which he recognized. This, we believe, is an apt characterization of the situation, and we are of the opinion that it having been shown by direct evidence that Douglas is at a material disadvantage in the competition for the business of the region tributary to it and its neighboring rivals, it may not justly be denied relief from the handicap under which it labors, because of the circumstance that up to the present it has done well in spite of the handicap.

The defendants appear to rest principally upon a defense of the principles of the rate structure of the region, as applied to the situation under consideration. Rates in this territory are made under the well-known basing-point system, the application of which to facts similar to those of the present case has been again discussed by the Commission in a number of recent cases. *Board of Trade of Carrollton, Ga., v. C. of G. Ry. Co.*, 28 I. C. C., 154; *Mayor and City Council, Vienna, Ga., v. G. S. & F. Ry. Co.*, 28 I. C. C., 173; *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.*, 28 I. C. C., 178; *City of Montezuma, Ga., v. C. of G. Ry. Co.*, 28 I. C. C., 280. It is argued in the present case that the method of establishing rates on the basis of the lowest possible combination gives all places all the competition to which they are entitled and reflects all the existing competition. In these conclusions we are unable to concur. As we observed in *Mayor and Council of Tifton v. L. & N. R. R. Co.*, 9 I. C. C., 160, 180, respecting the situation there under consideration the relation of rates here in question appears to be the incongruous outcome of previous adjustments and changes made with reference to places other than the complainant, rather than the result of any consistent plan having care for the just and equal rights of all.

Most of the testimony and argument dealing with the rate relation in the instant case is addressed to the matter of the rates from the west and, specifically, the complainants' contention that Douglas should have the same rates from the west as Waycross. No specific defense is made of the discrepancy between the rates to Douglas and to the cities alleged to be preferred from the eastern cities and Virginia cities, nor have the defendants made specific answer with respect to the commodity rates on flour from Chattanooga nor to the allegation that they discriminate against Douglas by failing to publish commodity rates such as are enjoyed by other places.

It was testified on behalf of the defendants that the rates to Douglas from the west are, with the exception of a few rates made on other combinations, based upon the Brunswick combination; that is, the Douglas rate is made up of the rate to Brunswick plus the rate from Brunswick back to Douglas. The Brunswick rate and the rate to interior points such as Douglas, it was said, are determined by competition with the water lines from the eastern ports and the competition with the rail lines through the Virginia gateways, using the rates to eastern ports and the Virginia gateways. It was argued that Douglas, in the changing adjustments of its rates, had received from time to time the benefit of this competition. Whatever may be the fact in this regard and while it is true that Douglas rates have changed, there is no showing that it has had substantial relief from the disadvantages suffered in the relation of its rates to the rates of its competitors.

The Waycross rates from the west are also based on the Brunswick combination, but with the condition that the combinations shall not exceed the rates to Valdosta. The defendants argue that the Waycross rates are controlled by the water-and-rail competition described above, which make the rates at the coast, and that by reason of its proximity to the ports of Brunswick and Savannah, its location naturally and without voluntary preference by the carriers necessarily gives Waycross lower rates than can be had by cities such as Douglas, farther in from the coast. Without wishing to intimate any general position as to the long-and-short-haul question here involved, we are of the opinion that under the present circumstances equalization should not be made between Douglas and Waycross.

From the relative locations described above it would seem that readjustment with respect to the rates from the west as well as from the east should be made between Douglas and the Fitzgerald-Valdosta-Tifton group. The rates to Fitzgerald from the west, it may be noted, are said to have been established at the time the Valdosta-Tifton-Thomasville adjustment was made, Fitzgerald having been included in this group. No specific defense of the difference between these Fitzgerald rates and the rates to Douglas is made in this proceeding, and indeed it was stated generally, by one of the defendants that the extension of the group rates to Fitzgerald represented a departure from correct rate-making principles. However this may be, it would seem that if these rates are to prevail, Douglas, which has a location similar to that of Fitzgerald, should not be excluded from the Fitzgerald group. We said in *Columbia Grocery Co. v. L. & N. R. R. Co.*, 18 I. C. C., 502, 505, if the rate adjustment is to be built and maintained upon the basing-point system, it should be applied alike to all places where real dissimilarity of circumstances or controlling competition do not exist. We find no such dissimilarity of circumstances between Douglas and Fitzgerald, and no argument has been made that the discrepancy in the rates prevailing at the two cities has been caused by the force of controlling competition.

One of the defendants, the Georgia & Florida, while admitting the discrepancy complained of, asks for a maintenance of the present status on the ground, in addition to the pendency of the fourth section applications, that a reduction of the rates at Douglas will probably entail requests for like reductions from other similar junction points on the Georgia & Florida north and south of Douglas and that this will result, with no material advantage to the cities because of their self-protecting efforts to maintain their natural trade, in an impairment of the road's revenue-earning capacity, both with respect to existing and probable future tonnage. It also alleges that it is operating under burdens caused by expenditures for improvement of service and provision for safety, and because of its practice

of establishing tariffs and facilities for interchange of traffic through its numerous junction points with other lines. The effect of this practice, it is said, is that most of the traffic originating and ending on the line of the Georgia & Florida is short-haul business, which, under the prevailing local rates and the expenses incident to the interchange with other lines, brings in but small revenue. While sensible of the difficulties and possible burdens which readjustment may cause, we are of the opinion that a plea of this kind can be no answer to a complaint of discrimination and that we may not properly withhold on this ground the present relief which the facts of the complaint seem in justice to require. A change in the Douglas rates is necessary to put Douglas on an equal footing with the competing neighboring cities.

Upon the record we find that there is no substantial dissimilarity between the circumstances and conditions of transportation at Douglas and at Fitzgerald and the common point cities, and that in so far as the class and commodity rates to Douglas are in excess of those to Fitzgerald they unduly prefer Fitzgerald and the cities of the Fitzgerald group and unduly prejudice Douglas. Consequently the defendants will be required to include Douglas in the Fitzgerald group under class and commodity rates charged the group.

An order will be entered accordingly.

28 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 236.  
OMAHA-OKLAHOMA FRESH-MEAT RATES.

*Submitted October 24, 1913. Decided November 10, 1913.*

Proposed increased joint rates on fresh meats in carloads from Omaha and South Omaha, Nebr., St. Louis, Mo., East St. Louis, Ill., and St. Paul, Minn., to points in Oklahoma found not to have been justified.

*R. G. Merrick* for Atchison, Topeka & Santa Fe Railway Company.  
*George A. Henshaw* and *L. Bennett* for Oklahoma Corporation Commission.

*C. B. Heinemann* and *John R. Baker* for Morris & Company.

REPORT OF THE COMMISSION.

*MEYER, Commissioner:*

This proceeding is an investigation of the reasonableness and propriety of proposed increased joint rates on fresh meat in carloads from Omaha and South Omaha, Nebr., St. Louis, Mo., East St. Louis, Ill., and St. Paul, Minn., to points in Oklahoma. Protest was made against the increases by the Corporation Commission of Oklahoma.

The rates under consideration from Omaha and South Omaha apply on the movement from those points to 28 stations in Oklahoma, on the line of the Santa Fe; Missouri, Kansas & Texas; Frisco; Oklahoma Central; Kansas City, Mexico & Orient; Wichita Falls & Northwestern; Chicago, Rock Island & Pacific; Missouri, Oklahoma & Gulf; St. Louis, El Reno & Western; Fort Smith & Western; Choctaw Railway & Lighting Company; Midland Valley; and Missouri Pacific. The Santa Fe was the only carrier represented at the hearing.

The rates at present in effect from Omaha and South Omaha are based upon a combination of 37 cents, Omaha to Wichita, Kans., plus the mileage rates established by this Commission in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, from Wichita to Oklahoma destinations, and have been in effect since October 28, 1912. Before this date class rates prevailed.

Soon after the present rates became effective the carriers increased the 37-cent rate from Omaha to Wichita to 56 cents. Then the Southwestern Lines Committee, through its agent, published the increased rates now under consideration from Omaha and South Omaha based on the new factors. The new rates were constructed

by adding to the 56-cent rate to Wichita the local mileage rates beyond, except in a number of cases where it was found that the third-class rate resulted in a lower basis. At the hearing it was stated by respondents that to nine destinations a lower rate would result by using the local of  $12\frac{1}{2}$  cents from Omaha and South Omaha to Kansas City, plus third class or combination of locals through Wichita—whichever was lower. Respondents offered to revise the suspended rates to this basis wherever the result would show a lower rate. Should the suspended rates with this modification become effective, they would result in increases of 19 cents over present rates to 20 destinations, and of from  $4\frac{1}{2}$  to 11 cents to the remaining 8 destinations.

On behalf of respondents it was stated that the 37-cent rate from Omaha to Wichita had been published through error, and that when their attention had been called to the same, by requests for combinations on that rate, they had proceeded to rectify it by putting in the 56-cent rate. Respondents seek to justify this rate by comparison with the rate of 50 cents from Kansas City and St. Joseph, which are points nearer Oklahoma than Omaha and South Omaha. Respondents claim that the normal basis of rates from shipping points here involved to Oklahoma stations is third class, but not to exceed the combination of intermediate rates. It was stated that the rates at present in effect from Kansas City and St. Joseph to Oklahoma are third-class combinations, and are in many instances higher than the combination of the rate from Kansas City and St. Joseph to Wichita, plus the mileage rate beyond. The fact that no complaint has been made with regard to the rates from St. Joseph and Kansas City is alleged to show that very little traffic moves under the rates involved in this proceeding. It was stated, however, that the rates from Kansas City and St. Joseph would be revised so as not to exceed the combination of locals.

The 37-cent rate Omaha and South Omaha to Wichita was first published in supplement 13 to Rock Island tariff I. C. C. No. C-8533, effective September 6, 1909. In tariff I. C. C. No. C-8790, item 130, effective March 23, 1910, the Rock Island continued this rate until March 11, 1913, when the increase to 56 cents became effective in supplement 42. Protestants were not interested in the movement to Wichita, and consequently made no complaint at the time this rate was increased. The 37-cent rate was also established and kept in effect by the St. Louis & San Francisco Railroad. Protestants state that this rate would seem to be a reasonable adjustment from Omaha to Wichita, in view of the rate of 54 cents from Sioux City, which is 100 miles more distant, established by the Rock Island in the same tariff, effective September 6, 1909.

The question now before us is not whether the 37-cent rate Omaha to Wichita was applied to fresh meat through an error in the carriers' traffic departments, but rather whether the joint rates of which the 37-cent rate is a factor are unreasonably low, and whether the proposed increases should be allowed to become effective.

The rates under consideration from St. Louis and East St. Louis apply on the movement from those points to Ardmore, Chickasha, and Oklahoma City, Okla. The present rates from St. Louis to the destinations named were published in Agent Leland's tariff I. C. C. No. 19, supplement 9, effective October 15, 1912, and are based on the Omaha combination by using the rate of  $15\frac{1}{2}$  cents per 100 pounds from St. Louis and East St. Louis to Omaha, adding to this the 37-cent rate from Omaha to Wichita, Kans., plus the local mileage rates from Wichita to Ardmore, Chickasha, and Oklahoma City. The basis thus arrived at was a slight reduction from the third-class rates which applied previous to October 15, 1912. It is now proposed by carriers to base the St. Louis rates on Kansas City by using the rate of 15 cents from St. Louis and East St. Louis to Kansas City, adding to this the 50-cent rate from Kansas City to Wichita plus the local mileage rates from Wichita to Ardmore and Chickasha. The rate to Oklahoma City is based upon a rate of  $18\frac{1}{2}$  cents from St. Louis to Kansas City which applies via lines other than the Chicago & Alton and Wabash, and adding to this the 74-cent third-class rate applying from Kansas City to Oklahoma City.

Carriers seek to justify the proposed rates from St. Louis and East St. Louis on the ground that the combination via Kansas City is a natural combination, it being a shorter route than via Omaha, and upon the ground that except where a combination such as this results in a lower rate third-class rates should be regarded as the normal rates for the movement involved.

The proposed rate from St. Paul is the third-class basis. The present rate is made upon the Omaha combination. An increase of  $2\frac{1}{2}$  cents per 100 pounds is involved.

In support of their contention that the present rates from Omaha, South Omaha, St. Louis, East St. Louis, and St. Paul are reasonable, protestants point to the mileage scale of rates suggested in our opinion in *Investigation of Alleged Unreasonable Rates on Meats, supra*. Among other things, this case dealt with fresh-meat rates between points in New Mexico, Texas, Oklahoma, Arkansas, Missouri south of the Missouri River, Louisiana west of the Mississippi River, and also from Wichita to points in that territory. A mileage scale of rates was prescribed for destinations of from 10 to 1,000 miles, and it was held that the rates under consideration were unreasonable in so far as they exceeded, for similar distances, those pre-

scribed in this table. This mileage scale was intended for use only in fixing rates on shipments destined to points within the described area. For more distant markets, such as the southeast, Carolina territory, and territory north of the Potomac and west of the Mississippi, the Commission established specific proportional rates or suggested the manner in which they should be constructed.

By applying the scale which we suggested in that case to the distance of 376 miles from Omaha to Wichita a rate of 44 cents results. For the distance of 532 miles, Omaha to Oklahoma City, the resultant rate would be 57 cents per 100 pounds, yielding 21.4 mills per ton per mile. The present rate from Omaha to Oklahoma City is 64½ cents per 100 pounds, or 24.1 mills per ton per mile, while the proposed rate is 83½ cents per 100 pounds, or 31.3 mills per ton per mile. The comparison with Oklahoma City is typical of all the Oklahoma destinations involved. The mileage scale proposed by us in the case above referred to shows a rate considerably less for similar distances than either the present or proposed rates from Omaha. The same is true when applied to the movement from St. Louis and East St. Louis to Ardmore, Chickasha, and Oklahoma City. The distance from St. Louis to Oklahoma City is 543 miles, and by using the mileage scale suggested by the Commission in the case referred to a rate of 57 cents per 100 pounds would result, yielding 20.6 mills per ton per mile. The present rate from St. Louis to Oklahoma City is 82½ cents, yielding 30.5 mills per ton per mile, while the proposed rate of 92½ cents would yield 34.1 mills per ton per mile. Since the rates now in effect from Omaha, South Omaha, St. Louis, East St. Louis, and St. Paul to Oklahoma destinations are on a higher basis than those proposed by us in *Investigation of Alleged Unreasonable Rates on Meats, supra*, for the movement between points in New Mexico, Texas, Oklahoma, Arkansas, Missouri, and Louisiana, it would seem that the proposed increase is not proper.

Protestants made numerous comparisons showing that the rates in both directions between Chicago and Kansas City, Chicago and Omaha, Chicago and Sioux City, Chicago and Sioux Falls, St. Paul and Kansas City, St. Paul and Omaha, Sioux City and St. Louis, Sioux Falls and St. Louis, Sioux Falls and Peoria, yield a per-ton-mile revenue of from 7.6 to 13.3 mills for distances approximately the same as those from Omaha and St. Louis to the Oklahoma destinations involved. The yield per ton per mile under the proposed rate from Omaha and St. Louis to Oklahoma destinations is approximately three times as great as under the rates above referred to, and under the rates at present in effect to Oklahoma destinations it is over twice as great. While the rates which have been used for comparison apply in a territory where traffic conditions are different



from those here involved, the great difference in per-ton-mile rates would, nevertheless, tend to show that the proposed increases are unreasonable. Attention should also be called to the fact that while the rates between the points named above are the same in both directions, the present southbound rate from Omaha to Oklahoma City is 64½ cents, proposed 83½ cents, and the northbound rate from Oklahoma City to Omaha is 38½ cents, and that the present westbound rate from St. Louis and East St. Louis to Oklahoma City is 82½ cents, proposed 92½ cents, and the eastbound rate from Oklahoma City to St. Louis and East St. Louis is 41 cents. It was also shown that the rates from Wichita, Kans., to St. Joseph, Kansas City, Omaha, St. Louis, Chicago, St. Paul, Memphis, and to Tupelo, Miss., yield a per-ton-mile revenue of from 11 to 18.3 mills for distances ranging from 213 to 715 miles. These rates also are on a considerably lower basis than either the present or proposed rates to Oklahoma destinations. All of the rates used for comparison are upon a considerably lower basis than the third-class rate for the same movement.

Upon consideration of all the facts and circumstances disclosed by this investigation, we are of the opinion that respondents have not sustained the burden of proving the propriety of the increased rates proposed in suspended tariffs. An order will be entered requiring respondents to cancel the tariffs under suspension and to maintain the rates now in effect for the statutory period.

No. 5771.

WAUSAU ADVANCEMENT ASSOCIATION ET AL.  
v.  
CHICAGO & NORTH WESTERN RAILWAY COMPANY  
ET AL.

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*Submitted October 22, 1913. Decided November 4, 1913.*

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1. Rates on lumber in carloads from Wausau and other points in northern Wisconsin to points in southern Michigan in the Benton Harbor group, justified as fairly in line with the adjustment to all destinations in central freight association territory.
2. Charge that such rates are discriminatory as compared with rates to the same points from Menominee, Mich., and Minneapolis, Minn., involves adjustment to entire central freight association territory and is not determined on this record, but is left open for consideration if hereafter brought before the Commission upon adequate petition and record. Complaint dismissed.

*A. E. Solie* for complainants.

*A. F. Cleveland* for Chicago & North Western Railway Company.

*O. W. Dynes* and *W. S. Howell* for Chicago, Milwaukee & St. Paul Railway Company.

*Bills, Parker, Shields & Brown* and *R. P. Paterson* for Pere Marquette Railroad Company and its receivers.

*D. P. Connell* for Michigan Central Railroad Company and Lake Shore & Michigan Southern Railway Company.

REPORT OF THE COMMISSION.

**MARBLE, Commissioner:**

The Wausau Advancement Association is unincorporated and is composed of residents of the city of Wausau, Wis. The other petitioners are owners and operators of lumber mills located in northern Wisconsin.

The petition attacks the existing rates for the transportation of lumber from Wausau, Schofield, Stevens Point, Rib Lake, Tomah, and Eau Claire, Wis., to certain points in southern Michigan taking Benton Harbor group rates.

The rate from Wausau may be taken as representative of all the rates in controversy here. At the time the complaint was brought the rate to Benton Harbor was 14½ cents per 100 pounds, while the rate to other points in the Benton Harbor group was 16½ cents. It was therefore alleged that the higher rate of 16½ cents to such points

as are intermediate was in violation of the fourth section of the act to regulate commerce. Since the complaint was filed, however, the rate to Benton Harbor has been increased to  $16\frac{1}{2}$  cents, and the violation of the fourth section has thus been eliminated.

For some years previous to June 1, 1911, the rate from Wausau to Benton Harbor group points was  $16\frac{1}{2}$  cents per 100 pounds. On the latter date it was reduced to  $14\frac{1}{2}$  cents per 100 pounds. On April 1, 1913, it was again made  $16\frac{1}{2}$  cents per 100 pounds on shipments to all points in this group except Benton Harbor proper, to which the rate of  $14\frac{1}{2}$  cents was continued. The rate to the latter point was made  $16\frac{1}{2}$  cents on September 1, 1913.

The carriers' showing by way of justification of the rate of  $16\frac{1}{2}$  cents consists of a claim that the rate of  $14\frac{1}{2}$  cents was published inadvertently. The theory upon which these lumber rates are constructed is that the lowest sum of the local rates by any open gateway shall be taken as the joint through rate, and that this shall be published by all routes. The reduction to  $14\frac{1}{2}$  cents on June 1, 1911, is said to have been made on the erroneous assumption that the rate from Chicago to Benton Harbor was 6 cents per 100 pounds. The rate from Wausau to Chicago being  $8\frac{1}{2}$  cents per 100 pounds, gave the basis for the rate of  $14\frac{1}{2}$  cents. This rate was not published by other gateways than Chicago. It appears, however, that these shipments of lumber from Wausau have been routed by the carriers and that claims for misrouting have been presented by the shippers whenever shipments have been forwarded through gateways taking the rate of  $16\frac{1}{2}$  cents. The net result has been, therefore, that the rate of  $14\frac{1}{2}$  cents has been applied via all gateways.

This claim of mistake in the publication of rates which remain in effect for as long a period as two years is not persuasive. The Commission in such cases will regard the rate as one voluntarily and knowingly made. It recognizes that errors will creep into tariffs, but feels that they should be discovered and eliminated within a reasonable time. It fully appears, however, that the rate of  $16\frac{1}{2}$  cents to the Benton Harbor group is fairly in line with the rates from the points of origin here in question to all points in central freight association territory. This is admitted by the petitioners. They claim, however, that rates from Wausau to all central freight association points of destination are relatively too high when compared with the rates from Menominee, Mich., and also when compared with the rates from Minneapolis, Minn. The evidence in support of this is largely in the form of comparative statements of revenue per ton per mile. Wausau is substantially the same distance from points in the Benton Harbor group as is Menominee. Its shipments, however, pay a rate of  $16\frac{1}{2}$  cents per 100 pounds, while the rate from Menominee is 12 cents

per 100 pounds. Minneapolis is 168 miles more distant from Benton Harbor than is Wausau, and its rate is 18 cents per 100 pounds, only  $1\frac{1}{2}$  cents in advance of the Wausau rate. The net result is that Wausau pays higher rates per ton per mile on shipments of lumber to the Benton Harbor group than does Menominee or Minneapolis.

The carriers have presented considerable testimony intended to prove that the rates from Menominee are controlled by water competition and are unduly low and that the rates from Minneapolis are so far affected by competition as to be fairly made when considered with reference to the Wausau rates.

The Commission is constrained to hold that the advance in these rates from Wausau and surrounding points to Benton Harbor and other points in the Benton Harbor group, made by the substitution of the rate of  $16\frac{1}{2}$  cents for the rate of  $14\frac{1}{2}$  cents, has been justified. This is upon the theory, which we understand to be held by complainants, that the rate of  $16\frac{1}{2}$  cents is fairly in line with rates from Wausau to all other points in central freight association territory. A condemnation of the rate of  $16\frac{1}{2}$  cents, therefore, would be in effect a condemnation of the entire rate adjustment from all northern Wisconsin points to all points in central freight association territory. The record here is not comprehensive enough to justify the Commission in expressing any opinion upon this larger issue. The conclusion, therefore, is that the rate of  $16\frac{1}{2}$  cents is fairly in line with the entire central freight association adjustment, and that that adjustment is not now before the Commission for examination.

The complaint will be dismissed.

28 L. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 230.  
OKLAHOMA GRAIN RATES.

*Submitted July 14, 1913. Decided November 4, 1913.*

1. Proposed increase in rates on grain and grain products to Fort Smith & Western Railroad stations in Oklahoma found not to have been justified.
2. Disagreement among participating carriers regarding the amount of their respective divisions of the through rate not justification for increase in rates.

*E. P. Smith* for Omaha Grain Exchange.

*J. J. Gibson* for Fort Smith & Western Railroad Company.

*J. E. Utt* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

*MEYER, Commissioner:*

Supplement 71 to Chicago, Rock Island & Pacific Railway Company's tariff I. C. C. No. C-6948, effective March 8, 1913, canceled through rates on grain and grain products from Chicago, Peoria, and Mississippi River, and places taking the same rates, to points on the Fort Smith & Western Railroad in Oklahoma. Supplements 6 to 7 to Chicago, Rock Island & Pacific Railway Company's tariff I. C. C. No. C-9387, effective March 7, 1913, canceled through rates on grain and grain products from Kansas City, Mo., Omaha, Nebr., and St. Louis, Mo., and places taking the same rates, to points on the Fort Smith & Western Railroad in Oklahoma.

On March 6, 1913, the Commission, pending investigation, suspended until July 5, 1913, the portions of all these supplements increasing the rates. On June 3, 1913, the effective date of supplements 6 and 7 to I. C. C. No. C-9387 was further suspended until January 5, 1914. The increased rates in supplement 71 were carried forward in supplement 74, and on June 3, 1913, were suspended until November 1, 1913. On October 17 the operation of these rates was further suspended until May 1, 1914.

This proceeding involves in particular the increase in rates on corn from stations in Iowa between Des Moines and Council Bluffs to Fort Smith & Western stations in Oklahoma. The through rates on corn in effect from these points of origin before the supplements in question were filed, and in force at the present time as a result of the Commission's order of suspension, are those applicable from Mississippi River points, namely, 20, 20½, and 21 cents per 100 pounds.

Under these rates milling in transit is allowed at Council Bluffs, Iowa. The effect of the suspended supplements is to increase the rates by the application of combination rates. These combination rates vary from 25.6 to 29.1 cents per 100 pounds, according to points of origin.

The Fort Smith & Western Railroad was completed in 1903. It extends from Fort Smith, Ark., to Guthrie, Okla., a distance of 217 miles. No general rates were established by it in connection with the Rock Island lines until September, 1910. Shortly before that time the two roads entered into a general traffic arrangement with each other with the understanding that percentage arrangements covering the divisions of through rates to be received by each road should not apply on coal, cotton, lumber, and grain. It is alleged that this understanding was carried out in every instance with the exception of grain and grain products from Kansas City, Omaha, and St. Louis territories, Minnesota Transfer, St. Paul and Minneapolis, Chicago, Peoria, and Mississippi River territories. Rates from the territories named were established in September, 1910. These rates were in effect until the season of 1911-12, when apparently the first movement under the rates took place. At that time the Fort Smith & Western conferred with the Rock Island as to the amount of revenue to accrue to it on this traffic and was informed that the through rate would be divided according to the proportion of the mileages of the hauls to and beyond El Reno, the end of the Rock Island's haul, but with the condition that the distance from El Reno to destination should be arbitrarily regarded as a minimum as 35 per cent of the entire haul.

Before this traffic reaches the Fort Smith & Western Railroad it has to pass over the St. Louis, El Reno & Western Railway, which extends from El Reno, Okla., to Guthrie, Okla., a distance of 42 miles. The 35 per cent mentioned above subdivides between the two roads on a mileage proportional basis, with the condition, however, that the distance of the short line should be arbitrarily regarded, as a minimum, as 25 per cent of the total haul of both. It is alleged that the revenue received by the Fort Smith & Western under this arrangement was so low that it felt it must ask for a cancellation of the rate. Protestant claims that by using a part of the Santa Fe system there is a connection between the Rock Island and Fort Smith & Western at Guthrie. A witness for the respondent stated, however, that he did not believe the Rock Island had any arrangement with the Santa Fe which would permit this sort of connection.

The principal controversy in this proceeding arises out of the amount of the division which the Fort Smith & Western demands, namely, 9 cents on wheat and 7 cents on coarse grain. It is argued

by the Fort Smith & Western that while the rates are low, the Rock Island, because of the circuitous character of its route, could not afford to charge a higher rate than that in effect via the direct lines from this territory, namely, the Kansas City Southern, which has a connection with the Fort Smith & Western at Coal Creek, Okla.; the Missouri Pacific, which connects at Fort Smith, Ark.; the Frisco, at Fort Smith, Ark., Weleetka and Warwick, Okla.; the Missouri, Kansas & Texas, at Crowder and Fallis, Okla.; and the Santa Fe, at Guthrie and Sparks, Okla. It may be noted, however, that the Rock Island is the only road which serves the points of origin in question under the rates in effect at the present time.

The Fort Smith & Western claims that although the rates are low, it must have a higher division of the through rate. As illustrative of the differences in revenues accorded by the various lines to the Fort Smith & Western on business from Mississippi River territory, the following table, taken from exhibits of the Fort Smith & Western, is given:

*Comparison of revenue, in cents per 100 pounds, received by the Fort Smith & Western Railroad on shipments of corn from Mississippi River via different lines.*

	C., R. I. & P. Ry. via El Reno, Okla.		M., K. & T. Ry. via Crowder, Okla.		St. L. & S. F. R. R. via Ft. Smith, Ark.		St. L., I. M. & S. Ry. via Ft. Smith, Ark.		K. C. S. Ry. via Coal Creek, Okla.	
	Dis- tance.	Reve- nue.	Dis- tance.	Reve- nue.	Dis- tance.	Reve- nue.	Dis- tance.	Reve- nue.	Dis- tance.	Reve- nue.
Kinta, Okla.....	162.3	4	28.3	5	54.7	4.5	54.7	6	24.7	7
Hanna, Okla.....	119	3.7	15	5	98	4.2	98	6	78	7
Okemah, Okla.....	85.2	3.3	48.8	5	131.8	4.3	131.8	6	111.8	7
Prague, Okla.....	58.2	3	75.8	5	158.8	4.4	158.8	6	138.8	7
Guthrie, Okla.....	.....	1.8	134	5.7	217	4.4	217	6	197	7

In further support of its contention that it must have a higher division its representative called attention to the fact that the grain which originates at Rock Island stations in Iowa is milled in transit at various milling points including El Reno. When the grain is milled at El Reno the Fort Smith & Western is obliged to furnish the equipment. The towns on the Fort Smith & Western are small, and shipments usually come in minimum carload lots. It is also alleged that there is practically no movement from the territories enumerated to Fort Smith & Western stations unless crop conditions are abnormal in Oklahoma.

The protestant operates elevators at Underwood and Neola, Iowa, and in addition handles grain purchased at all points on the Rock Island between Des Moines and Council Bluffs, Iowa, a distance of 141 miles. As the Fort Smith & Western files a general concurrence

with the Rock Island covering all rates, the protestant is able to ship corn from these stations to destinations on the Fort Smith & Western at through rates of 20, 20½, and 21 cents per 100 pounds. These rates are made up as follows: From all points of origin between Weston and Commerce, Iowa, to stations between Coal Creek and Weleetka, Okla., inclusive, 20 cents; between Clear View and Castle, Okla., both inclusive, 20½ cents; and between Boley and North Yard, Okla., both inclusive, 21 cents. If the supplements under suspension are allowed to become effective combination rates, made up of Iowa distance tariff rates from points of origin to Council Bluffs, plus proportional rates from Council Bluffs to Kansas City via Belleville, plus joint proportional rates from Kansas City to Fort Smith & Western stations, will obtain. The combination described results in rates of 25.6 to 29.1 cents.

Protestant states that it has built up some business on corn in this territory on these rates which it will be impossible to continue should the combination rates be permitted.

Respecting the matter of divisions it was also stated on behalf of protestant that the Fort Smith & Western and St. Louis, El Reno & Western are practically one road because the Fort Smith & Western holds 51 per cent of the stock of the other carrier. Under these circumstances, it is alleged, the divisions for the haul from El Reno practically go into the same pocket. This was controverted, however, by counsel for respondent, who stated that while the Fort Smith & Western does own 51 per cent of the stock of the St. Louis, El Reno & Western the two roads are separately operated.

As indicated in the foregoing, while the carriers are in disagreement as to the divisions they do not contend that the rates themselves are unreasonably low. In response to a question from the representative of the Rock Island the traffic manager of the Fort Smith & Western stated that while he considered 7 cents a low division on corn, because most of the points receiving this commodity are located on the eastern part of his line, necessitating a long haul by his company, he would be willing to accept that amount in order to keep in force joint through rates.

The joint rates involved in this complaint, it may be noted, were voluntarily established by the Chicago, Rock Island & Pacific Railway and concurred in by the Fort Smith & Western Railroad.

The fact that the Chicago, Rock Island & Pacific Railway and the Fort Smith & Western Railroad can not agree on the division of the through rate which each shall receive is not sufficient to justify the establishment of a higher rate. This was pointed out by the Commission in *Advances on ground iron ore from points in Alabama*,



*Georgia, and Tennessee to Boston, New York, Philadelphia, and other points*, 26 I. C. C., 675, 676, wherein we said:

Evidence was offered to show that the divisions received by the southern carriers out of the present rates are unduly low, but disputes between carriers as to divisions do not justify increases of rates.

The Commission has many times stated that in the event that carriers can not agree upon the amounts of the division of a through rate each should receive, they may come to the Commission and it will determine the amounts which it considers reasonable.

Other than by the contention that the divisions received by the Fort Smith & Western are too small, which, as just indicated, does not establish that the rates themselves are unduly low, the carriers have made little or no showing that the present through rates are unreasonably low. It follows, therefore, that they have not sustained the burden placed upon them by the act.

The respondents will be required to continue the present rates as maxima for a period of not less than two years.

An order in accordance with this finding will be entered.

28 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 270.  
SCRAP-IRON RATES BETWEEN DULUTH, MINN., AND  
CHICAGO, ILL., AND OTHER POINTS.

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*Submitted October 8, 1913. Decided November 3, 1913.*

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Proposed increased rates on scrap iron from Duluth and St. Paul, Minn., to Chicago, Ill., and between other points, found reasonable and order of suspension vacated.

*G. Roy Hall* and *Frank Lyon* for protestants.

*W. D. Burr* and *James B. Sheean* for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

*A. P. Humburg* and *R. V. Fletcher* for Illinois Central Railroad Company.

*W. H. Bremner* and *F. M. Miner* for Minneapolis & St. Louis Railroad Company.

*Wallace T. Hughes* and *W. F. Dickinson* for St. Paul & Kansas City Short Line Railroad Company and Chicago, Rock Island & Pacific Railway Company.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*A. H. Lossow* for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

*R. H. Widdicombe* and *C. C. Wright* for Chicago & North Western Railway Company.

*O. W. Dynes* and *J. N. Davis* for Chicago, Milwaukee & St. Paul Railway Company.

*G. B. Winston* for Chicago Great Western Railroad Company.

REPORT OF THE COMMISSION.

**McCHORD, Commissioner:**

In this investigation there are under suspension the following tariffs of *W. H. Hosmer*, agent: Supplement No. 30 to I. C. C. No. A-244, supplement No. 33 to I. C. C. No. A-244, supplement No. 16 to I. C. C. No. A-304, and supplement No. 18 to I. C. C. No. A-304. While the proposed tariffs cover rails, old and new, cross-ties and track fastenings, as well as scrap iron, the protest is directed more particularly against the increase in the scrap-iron rates. The rates proposed by the carriers increase the present charge for the transportation of this commodity from Duluth, Minn., to Chicago, Ill., from  $8\frac{1}{2}$  to  $10\frac{1}{2}$  cents per 100 pounds; from Duluth to St. Louis, Mo., from  $12\frac{1}{2}$  to  $14\frac{1}{2}$  cents per 100 pounds; from St. Paul to Chicago from 8 to 10 cents per 100 pounds; and from St. Paul to St. Louis from 10 to  $10\frac{1}{2}$  cents.

Protestants the Duluth Iron & Metal Company, of Duluth; Paper, Calmenson & Company, of St. Paul; and Hyman, Michaels Company of Chicago, assert that the proposed increase is unreasonable and unjustly discriminatory, and that if permitted to become effective will result in great injury to their business, bringing about a discontinuance of it at least in so far as the lower grades of scrap iron are concerned.

Scrap iron moves in large quantities from Duluth and the twin cities to Chicago and St. Louis, nearly 100,000 tons being the record of a single year. It usually loads from 70,000 to 80,000 pounds per car, although the minimum is but 50,000 pounds. It is hauled almost exclusively in gondolas which have brought from the east machinery, structural material, and coal. The railroads move scrap at their convenience, it being considered low grade or dead freight. It requires no special or expedited service, and subjects the carrier to practically no risk of loss or damage.

The protestants show that the proposed increase in rates would not in any manner affect the Chicago or St. Louis markets, both of these points drawing their supply from various sources other than from the territory of the protestants. They therefore insist that the proposed rates would put them at a disadvantage with their competitors, and result in serious impairment of their business.

The rates on scrap iron between the points now under consideration, especially the twin cities, have fluctuated more or less during the past few years. From 1889 to 1904 the rate from St. Paul to Chicago was 10 cents. It was stated that in 1904, when competition was intense, the rate was reduced to \$1.40 per gross ton by the Wisconsin Central line in order to secure the bulk of an accumulation of some 700 tons of scrap iron at St. Paul, and this rate was met by competing carriers. In 1907 the rate was increased from \$1.40 to \$1.75 and in 1909 was reduced to 8 cents per 100 pounds. The present increase seems to have been brought about by complaints filed with the Commission by scrap dealers in Sioux Falls, S. Dak., alleging that their rate to Chicago of 15½ cents was unreasonably high as compared with the rate from Duluth and the twin cities. This 15½-cent rate, the short-line distance between Sioux Falls and Chicago being 547 miles, yielded to the carrier 5.7 mills per net ton per mile. Upon investigation it was found that from some of the towns in the general vicinity of Sioux Falls the combination on St. Paul to Chicago was less than the combination on Sioux Falls, and the combination on St. Paul from Sioux Falls to Chicago was only 16½ cents, whereas the direct-line rate from Sioux Falls was 15½ cents. This presented a situation apparently unfair to Sioux Falls and the carriers accordingly filed tariffs increasing the St. Paul rate, which also carried the increases from Duluth and Minneapolis under suspension.

The 8-cent rate from St. Paul to Chicago afforded a return of 4 mills per ton per mile, this being 6 cents less than the class-D rate under which scrap would move in the absence of a commodity rate. The increase to 10 cents would net a return of 5 mills per ton per mile and would be exactly the same amount less than the class-D rate as the 15½-cent rate from Sioux Falls.

The 8½-cent rate from Duluth to Chicago yields 3.6 mills per ton per mile and is 8½ cents less than the class-D rate, while the increase to 10½ cents would return 4.5 mills per ton per mile and would reduce the difference between class D and the commodity rate to 6½ cents.

From St. Paul to St. Louis the 10-cent rate yields 3.5 mills, while the 10½-cent rate would return 3.6 mills. The class-D rate is 15 cents, which would bring the proposed commodity rate to within 4½ cents of the class-D rate.

From Duluth to St. Louis the 12½-cent rate yields 3.4 mills and the proposed rate of 14½ cents would return 4 mills. The class-D rate is 20 cents, a difference of 5½ cents over the proposed commodity rate.

These comparisons make it clear that if Sioux Falls is to be taken as a test, the proposed increase is justified; but to make such a comparison conclusive would be to assume the reasonableness of the Sioux Falls rate and that the conditions surrounding the two territories are identical. While some scrap moves from Sioux Falls, its volume is considerably less than that transported from Duluth and the twin cities. But the Duluth-twin cities rates not only produce less revenue than the Sioux Falls rate, but also are lower and produce less revenue per ton per mile than almost any rate on scrap in effect in any part of the country, so far as the record in this case discloses.

We give below a table showing the present rates and the yield per ton-mile as compared with scrap-iron rates in other sections:

From—	To—	Short-line distance.	Rate per ton.	Rate per ton-mile.
				<i>Mills.</i>
St. Paul.....	Chicago.....	398	\$1.80	4
Do.....	St. Louis.....	573	2.00	3.5
Duluth.....	Chicago.....	469	1.70	3.6
Do.....	St. Louis.....	726	2.50	3.4
Kansas City.....	Chicago.....	468	3.00	6.5
Do.....	St. Louis.....	283	2.00	7
Omaha.....	Chicago.....	488	3.00	6.1
Do.....	St. Louis.....	414	2.00	4.8
Watertown.....	Chicago.....	593	3.60	6
Do.....	St. Louis.....	661	5.00	7.5
Des Moines.....	Chicago.....	858	2.40	6.5
Do.....	do.....	359	2.00	5.5
Chicago.....	Akron.....	353	2.40	7
Do.....	Buffalo.....	504	3.00	6
Do.....	Canton.....	356	2.40	7
Do.....	Cleveland.....	389	2.40	7
Do.....	Columbus.....	365	2.40	8
Do.....	Erie.....	435	3.00	7
Do.....	Ironton.....	419	3.00	7
Do.....	Jackson.....	389	2.70	6
Do.....	Massillon.....	347	2.40	7
Do.....	Pittsburgh.....	468	3.00	6
Do.....	Youngstown.....	406	2.70	6
Do.....	Zanesville.....	359	2.70	7

Admittedly, with reference to some of these comparisons, conditions surrounding the transportation are not the same. Although it has been availed of in few, if any, instances, there has always existed potential competition on scrap by water, especially from Duluth to Chicago. The waterway has been used for the transportation of rails, and that, respondents say, accounts for the extremely low rate on such freight. The impression is gained that because of shippers' ability to resort to the lake movement in event the all-rail rate is not satisfactory, the protestants consider it to be the duty of respondents to meet this possible water competition. But the existence of such a condition and the fact that because of the likelihood of competition, a carrier makes a rate which may not be compensatory, does not of itself render unreasonable and unjust an increase to a remunerative basis. The extent to which a carrier shall lower its rate to meet anticipated competition is a matter primarily for its decision, and should it later raise the rate, the sole question for our determination is whether that increased rate is just and reasonable for the service performed, and not whether the carrier should be compelled to keep its rates on a probable unremunerative basis upon which it voluntarily put itself to meet special conditions. Aside from the possibility of water competition, we do not think that other traffic conditions surrounding the movement of scrap from Minnesota points to Chicago and St. Louis are so different from the conditions incident to the movement of the same commerce from the points under comparison as to justify the variance in the rates indicated above.

The protestants direct considerable of their testimony toward establishing the fact that in some of the tariffs under suspension scrap iron will move at a higher rate than pig iron and new rails; that pig iron and new rails are higher grade commodities and can better bear a higher rate than scrap and that to put scrap on the same or a higher scale would be unjustly discriminatory. It does not follow that the scrap-iron rates should necessarily be fixed with a definite relation to the rates on pig iron or new rails. The evidence indicates that pig iron is more easily handled and loads heavier than scrap; and that with reference to both pig iron and new rails the element of water competition enters more strongly, the record disclosing that both articles, and especially rails, move quite extensively by water.

We are of the opinion that the respondents have sustained the burden of showing the proposed increased rates reasonable, and an order will be entered removing the suspension.

INVESTIGATION AND SUSPENSION DOCKET No. 223.

LUMBER RATES FROM TEXAS, LOUISIANA, AND ARKANSAS TO OKLAHOMA AND MISSOURI.

*Submitted November 11, 1913. Decided November 17, 1913.*

1. Proposed increase in rates on lumber from points on connecting lines of the Santa Fe in Texas, Louisiana, and Arkansas, to Santa Fe destinations in eastern Kansas, extreme western Missouri, and northern Oklahoma, not found to be justified.
2. Proposed cancellation of joint rates on lumber from points on the Cotton Belt to Santa Fe destinations in Missouri and on cypress and yellow pine from points on the Missouri Pacific to Santa Fe destinations in Oklahoma not found to be justified.
3. A carrier should not be permitted to retain to itself the lumber market at points on its line for the benefit of producing points on its line, to the exclusion of producing points on other lines.

*J. J. Coleman and Robert Dunlap* for Santa Fe System lines.

*C. C. P. Rausch* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

*S. H. West and E. A. Hird* for St. Louis Southwestern Railway.

*A. E. Helm* for Public Utilities Commission of Kansas.

*Harry Gorsuch* for Southwestern Lumbermen's Association.

*John A. Sargent* for Central Coal & Coke Company.

*G. F. Thomas* for Arkansas Southern Manufacturers' Association.

*E. W. McKay* for Southern Cypress Manufacturers' Association.

REPORT OF THE COMMISSION.

**MEYER, Commissioner:**

Agent Leland's tariff I. C. C. No. 954, supplement 9, and tariff I. C. C. No. 986 contain increased rates on lumber from certain stations in Texas, Louisiana, and Arkansas on lines of carriers having through routes with the Santa Fe to Santa Fe destinations in eastern Kansas and extreme western Missouri. Agent Leland's tariff I. C. C. No. 970, index numbers 6147 to 6159, contains increases from the same territory of origin to stations on the Santa Fe, Owen to Tulsa, Okla., inclusive. The same tariff, in item No. 689, cancels joint rates on yellow pine and cypress from Iron Mountain points of origin to all stations in Oklahoma on the Santa Fe, leaving joint rates in effect on lumber other than cypress and yellow pine. Supplement 6

to St. Louis Southwestern Railway's tariff I. C. C. No. 2797 cancels through rates on lumber from stations on that carrier's line in Arkansas, Louisiana, and Texas to stations on the Santa Fe, Dumas to Bucklin, Mo., inclusive. By order of the Commission these increased rates and cancellations were suspended pending this investigation as to their propriety.

The territory of destination affected by the increased rates contained in Agent Leland's tariffs above referred to embraces St. Joseph, Mo., on the north, Tulsa, Okla., on the south, Kansas City and Joplin, Mo., on the east, and Rock Creek, Spencer, Olivet, Virgil, Gridley, Elk Falls, and Elgin, Kans., on the west. For years past rates on lumber via the Santa Fe, both from points on its line and on connecting lines, to destinations within the territory described, have been depressed below the rates to intermediate Santa Fe destinations. The present rate to 129 stations is 24 cents; to 14 stations, 25 cents; to 7 stations, 26 cents; and to 5 stations, 27 cents. Stations intermediate, however, such as Topeka, Emporia, Moline, and Winfield, Kans., take a rate of 27½ cents. This situation is due to the competition at eastern Kansas stations of the more direct lines of the Kansas City Southern, Frisco, Iron Mountain, and Missouri Pacific. It should be borne in mind that no change is proposed in lumber rates from points on the Santa Fe and that mills there located will continue to ship to stations in the depressed area at a lower rate than to points intermediate. The present proposal of carriers is to raise the rates on lumber coming to the Santa Fe from connecting carriers, and destined to points within the depressed area described, to a uniform level of 27½ cents, which will be as high as the rates to intermediate points in central Kansas.

The tariffs under suspension publish rates to both local and common points on the Santa Fe within the district described from points on the Texas & Pacific Railway, International & Great Northern Railway, Eastern Texas Railroad, St. Louis Southwestern system, Burr's Ferry, Brownell & Chester Railway, Denisons Pacific Suburban Railway, Texas & New Orleans Railroad, Morgan's Louisiana & Texas Railroad, Louisiana Western Railroad, Houston East & West Texas Railway, Houston & Texas Central Railroad, Houston & Shreveport Railroad, Paris & Mount Pleasant Railroad, Galveston, Harrisburg & San Antonio Railway, Orange & Northwestern Railroad, Beaumont, Sour Lake & Western Railway, and the Beaumont & Great Western Railroad.

Protests were filed against the proposed increases and cancellations by the Public Utilities Commission of Kansas, by a large number of lumber dealers located on the Santa Fe's line, and by various manufacturers and associations of lumber manufacturers.

The testimony presented by respondents in the attempted justification of the proposed increases is meager and unsatisfactory. The burden of defense was assumed by the Santa Fe. On behalf of the Missouri Pacific and the Cotton Belt, who were the only other carriers represented at the hearing, it was stated that they merely wanted to be maintained on the same basis with regard to lumber rates to Santa Fe destinations as all other connecting carriers of the Santa Fe.

It is evident that respondents can place no reliance upon the claim that the proposed readjustment is in conformity with the fourth section of the act, for the rates from Santa Fe lumber-producing points to the territory of destination involved are continued to be depressed below those to intermediate stations. The sole argument advanced by respondents is that the rates to the depressed area are too low, and that on account of the additional distances and the fact that a two-line haul is involved the Santa Fe should not be forced to carry these rates from connecting carriers.

This situation was, in a measure, before the Commission in the case of *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.*, 14 I. C. C., 364, in which the right of the Santa Fe to cancel its through rates on lumber from connecting carriers, in the same general territory of origin herein involved, was denied, and the canceled rates were ordered restored. That case included a greater number of Santa Fe destinations throughout Kansas, Colorado, and Oklahoma, but the rates to eastern Kansas, which were then as low as 23 cents and have subsequently been increased, were also involved. The Commission held that the canceled rates were reasonable and ordered them reestablished. In that case, as in the present, it was the contention of protesting lumber dealers that the Santa Fe is not justified in restricting the producing markets at which protestants might secure their supplies. Upon this point the Commission, at page 367, said:

The opportunity to buy in a widely extended market is a valuable one to merchants, in that it presents a larger field of competition and ordinarily offers the best quality at the lowest price. And a carrier has no right, by refusing through routes and joint rates, to restrict or circumscribe this opportunity.

\* \* \* \* \*

Both the dealers and the mills may properly look to the carriers serving those points of origin and destination to provide the facilities and to establish through routes and fair and reasonable rates for the movement.

While this language was used in connection with the Commission's determination that through routes and joint rates should be maintained, it is alleged by protestants that the proposed increased rates will, in effect, confine the movement of lumber to local points on the Santa Fe to shipments originating at Santa Fe mills alone and exclude from that market the lumber produced on all other southern lines, and which represents by far the largest total production.



The rates from the territory of origin involved to eastern Kansas points on the lines of the Missouri Pacific; Union Pacific; Frisco; Chicago, Burlington & Quincy; and Chicago, Rock Island & Pacific via those lines have not been changed. It was shown by protestants that lumber yards at local stations on the Santa Fe will be at a great disadvantage in competition with yards located from 2 to 12 miles cross country upon the lines of the above-named carriers. The addition of  $3\frac{1}{2}$  cents to the 24-cent rate, prevailing to most of the stations involved, amounts to 75 cents per 1,000 feet and to \$11.90 per car at a minimum weight, which is generally exceeded in actual practice, of 34,000 pounds. This additional cost, it was testified, is sufficient to control the farmer trade tributary to these points. There are 36 local stations of the Santa Fe to which advances in rates are proposed at which lumber yards are located. Under the proposed rates these yards would be forced to look to Santa Fe mills for their entire supply. The lumber producers in the southwest testify that the proposed increases would take from them the trade which they have developed at these local stations of the Santa Fe. The broad fundamental question involved in this case is whether the Santa Fe should be permitted to retain for itself the lumber market at points on its line for the benefit of producing points on its line to the exclusion of all others, except under a penalty of  $3\frac{1}{2}$  cents per 100 pounds. We think this is an exercise of a carrier's rate-making power far too arbitrary and too selfish to be permitted under the act. As a matter of sound policy under the law, a carrier is not justified in attempting to restrict its traffic to movement between points on its own line. Through rates are published from lumber-producing points on the Santa Fe to points of consumption on other lines allowing free movement at competitive rates; and, similarly, the Santa Fe should maintain competitive rates from connecting carriers wherever it is possible to do so without loss. In the case of *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, 22 I. C. C., 39, 46, we held:

Our railroads are called upon to so unite themselves that they will constitute one national system; they must establish through routes, keep these routes open and in operation, furnish the necessary facilities for transportation, make reasonable and proper rules of practice as between themselves and the shippers, and as between each other.

The question before us resolves itself into one of the reasonableness of the proposed increases. In the *Star Grain & Lumber Co. case*, *supra*, the Commission fixed the divisions between the Cotton Belt and the Santa Fe, and left the carriers to agree as to divisions with other lines involved. With regard to the rates and divisions fixed, the Commission, at page 371, used the following language:

The division which the Santa Fe will get under the adjustment now made of the joint rates when restored will afford it reasonable earnings per ton per

28 I. C. C.

mile, but not in excess of an equitable share when all the circumstances shown of record are taken into consideration.

In support of their contention that the proposed increases are proper, respondents introduced an exhibit showing the per ton per mile yield under present and proposed rates for what are alleged to be typical hauls. Although the resulting yield per ton per mile is given for both long and short hauls, these are not typical of the situation under consideration, for the reason that at many of the points at which rates are now in effect no lumber is produced. An accurate presentation must include a statement which will show the actual hauls of lumber on the Santa Fe and its connections and the average length of the hauls from connecting lines to the destinations herein involved.

For the purpose of showing increased costs, an exhibit was introduced containing cumulative financial, operating, and traffic data for 28 southern and southwestern roads, more than half of which are not parties to this case and do not participate in the movement involved. This exhibit was introduced in *In the matter of Southern and Southwestern Lumber Rates*, Docket No. 4907, now before the Commission, and is relied upon by the carriers in this proceeding to establish the justice of their contention that these rates should be increased. The bearing of these data upon the present controversy is not apparent. We have no testimony before us in substantiation of respondents' contention that the present rates from connecting lines to points on the Santa Fe in the territory described are unremunerative. In the absence of this proof it must be held that carriers have failed to meet the burden of proof which the statute places upon them.

It should be added that in view of rates on other lines for similar hauls, the present rates from connecting carriers to Santa Fe destinations in eastern Kansas would seem to be reasonable. It is testified on behalf of respondents that the Kansas City Southern fixes the rate to Joplin and Pittsburg, Kans.; the Iron Mountain and Missouri Pacific to Joplin, Cherryvale, Independence, Ottawa, Kans., and Kansas City, Mo.; the Frisco, Missouri Pacific, and Iron Mountain to Coffeyville, Kans.; and the Frisco to Olivet, Kans. The route of the Kansas City Southern to points which are competitive with those on the Santa Fe is in every instance considerably shorter than the route via the Santa Fe. The route of the other competing carriers above named from both Texas and Louisiana producing points is in some instances a little shorter, in many instances about the same, and in others a little longer than the route of the Santa Fe via Fort Worth, and the fact that these carriers maintain the rate of 24 cents to other common points with the Santa Fe in eastern Kansas would indicate that this rate is remunerative. In the hauls of the length here in-

volved, ranging from 650 to 1,245 miles, a considerable addition in mileage could well be overlooked, especially where the necessity exists of maintaining points of production and consumption on an equality with their competitors.

The question of the propriety of maintaining higher rates to stations of the Santa Fe in central Kansas intermediate to those in eastern Kansas is not before us in this proceeding.

It was stated on behalf of respondents that joint rates on yellow pine and cypress from Iron Mountain points to stations in Oklahoma on the Santa Fe had been made effective through error. An examination of the tariffs shows that yellow pine and cypress were carried at the same rate as other lumber from stations on the Iron Mountain as far back as September, 1908, and that this rate continued until August 24, 1910. At the latter date the joint rates on yellow pine and cypress were discontinued, but on March 25, 1912, they were again made effective. Whether the provision for joint rates on cypress and yellow pine was included in the tariff through error in 1912 is of little moment. The question before us is whether the proposed elimination of joint rates is proper. We see no reason why joint rates should not be maintained on cypress and yellow pine from points of origin on the Iron Mountain as well as on other lumber. From connecting lines involved in this case, other than the Iron Mountain, and from points on the Santa Fe the same rate is published on cypress and yellow pine as on other lumber to all of the destinations in eastern Kansas, western Missouri, and Oklahoma which we have had under consideration.

There remains to be considered the attempt to cancel the rate of 26 cents from points on the Cotton Belt to Santa Fe destinations, Dumas to Bucklin, inclusive. This traffic is now routed via Forth Worth. It was stated on behalf of the Cotton Belt that since rates to Kansas City and eastern Kansas destinations on the Santa Fe were raised to 27½ cents, it was necessary to change the routing from Fort Worth to Kansas City, and that the cancellations were made because no satisfactory agreement could be reached as to divisions beyond Kansas City. The maintenance of the 24-cent rate to Kansas City will obviate the necessity of changing the routing. It appears that the Cotton Belt is satisfied with the rates under present routing.

An order will be entered requiring respondents to cancel the tariffs under suspension and to maintain the rates now in effect for the statutory period.

INVESTIGATION AND SUSPENSION DOCKET No. 257.  
IOWA-MINNESOTA CEMENT RATES.

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*Submitted July 12, 1913. Decided November 10, 1913.*

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1. Proposed increase in rate on cement from Mason City, Iowa, to International Falls, Minn., by the cancellation of the existing rate between these points, applicable also to intermediate stations, of 13 cents per 100 pounds found not to be justified.
2. A rate otherwise reasonable is not shown to be unduly low by the presence in the carrier's tariff of a higher rate for a shorter distance involving a fourth section violation. Adjustment should be made with respect to the latter rate.

*F. E. Paulson, W. F. Clark, and L. J. Dauback* for Lehigh Portland Cement Company.

*H. E. Still* for Northern Pacific Railway Company, Minnesota & International Railway, and Big Fork & International Falls Railway.

*F. S. Hollands* for Chicago Great Western Railroad Company.

REPORT OF THE COMMISSION.

*MEYER, Commissioner:*

On the protest of the Lehigh Portland Cement Company, which ships cement from Mason City, Iowa, this Commission suspended a schedule and portions of schedules of the Chicago & North Western Railway Company and the Chicago Great Western Railroad Company which proposed the cancellation of a rate on cement from Mason City, Iowa, to International Falls, Minn., applicable also to intermediate points, of 13 cents per 100 pounds.

Cement moving from Mason City to International Falls has, after it reaches Minneapolis and St. Paul, the twin cities, a choice of two general routes. These alternative routes form an irregular ellipse, with its long axis extending north and south between the twin cities and International Falls. The movement from the twin cities to destination may be either up the west side of the ellipse through Brainerd, Minn., or up the east side through Duluth, Minn. Cement also moves to International Falls from Duluth, where it is brought by lake or rail carriers. From Duluth, which is about midway on the east side of the ellipse, the traffic may move either directly up the east side to International Falls or, when it goes via the Northern Pacific, over a diagonal across the ellipse to Brainerd and thence up the west side to destination. The short route between Duluth and International Falls is, of course, the one first mentioned.

the shippers at Chicago territory and other cement-producing points taking the Chicago rate will be noticed later.

Protestant asserts that the 13-cent rate, both with respect to International Falls and the intermediate points, is a reasonable one, and that the Northern Pacific's proposal to do away with its intermediate application by canceling it in its entirety is without justification. It points out that the 13-cent rates of the other roads, namely, the Chicago, Milwaukee & St. Paul and the Chicago & North Western, via Duluth, have intermediate application and that the distances via the Duluth route to International Falls are practically the same as the distance via the Brainerd route of the Northern Pacific. The distance via the Northern Pacific route from Mason City to International Falls, as stated by Protestant, is 472.9 miles; via the Chicago, Milwaukee & St. Paul, by way of Duluth, it is 461.7 miles; and via the Chicago Great Western, by way of Duluth, it is 470.7 miles. The North Western's route via Duluth is a longer one, a distance of 536.5 miles. In reply the Northern Pacific discusses the situation respecting the routes to International Falls from Duluth. It refers to the fact that while the other roads carrying between Duluth and International Falls give their rates intermediate application, this Commission in January of the present year authorized the Northern Pacific to apply its rate from Duluth only as a terminal rate because of the much longer distance between the two points over the Northern Pacific lines. The Protestant rejoins that this argument is not responsive to its contention, and that while it is true that the Northern Pacific has a circuitous route from Duluth to International Falls, the distances to this point from Mason City, in which it is interested rather than in Duluth, are practically the same over the Northern Pacific and the other routes, and that consequently with respect to traffic from Mason City there would seem to be no reason why the Northern Pacific should not make the same rate as the other lines.

Protestant compares the 13-cent rate from Mason City with the rate from La Salle, Hannibal, and Buffington, which is the 16-cent Chicago rate, arguing that comparison of the distances shows that Mason City is entitled to the small differential of 3 cents. The distances to International Falls are, approximately, from Mason City 473 miles, La Salle 711, Hannibal 772, and Buffington 786. It says that while it is true that the 16-cent rate of the Northern Pacific is not applied to intermediate points, intermediate application is given by other roads whose tariffs carry the 16-cent rate. It is the fact that a tariff of the Great Northern carries this rate with intermediate application for the route via Duluth.

Protestant refers also to other commodity rates carried in the Northern Pacific and Great Western tariffs. Particular emphasis is

laid on a comparison between rates on lime and cement. At present the rate on lime from Mason City to International Falls is 15 cents, slightly higher than the cement rate. If, however, the cement rate of 13 cents were canceled, the rate to intermediate points south of International Falls on the scale of the 5-cent rate from Mason City to St. Paul and the 15-cent local rate beyond would result in a rate on cement of from 1 to 5 cents higher than the rates on lime over the same route. This protestant argues can not be justified in view of the fact that lime can not be loaded as heavily as cement, and that the liability of the carrier in handling lime is greater, since it is a commodity requiring perishable-freight service. It points to the fact that throughout western trunk line and trans-Missouri territories lime rates are generally higher than cement rates.

Protestant makes further comparison between the car earnings in the cases of the two commodities under the present 13-cent and 15-cent rates. The tariff on lime provides for a minimum carload of 30,000 pounds, on which the earnings at the 15-cent rate would be \$45. The minimum on cement is 40,000 pounds and on a minimum car the earnings would be \$52. It says that it is the fact that to some of the larger towns, such as International Falls, the carload in the case of lime is sometimes as high as 42,000 pounds, which would bring the earnings up to \$63 per car. With this, however, it compares the loading in the cases of some 17 shipments of cement made by it while the 13-cent rate has been in effect, during which time the average loading was 49,579 pounds, resulting in earnings on cement of \$66.24 per car.

A comparison is made between the proposed rates on cement and brick. Here also the cement, as in the case of lime, would be at a disadvantage of from 1 to 5 cents. It is argued that this difference can not be justified and that the carriers can not properly charge a higher rate on cement than on brick, a commodity which comes in direct competition with cement.

Upon the foregoing aspects of the matter we are of opinion that protestant, in the various comparisons adduced, establishes its contention that the 13-cent rate is not an unreasonable one. At least it appears that respondents, upon whom the burden of proof lies, have not demonstrated that the increase is justified. It may be said generally that for the average distance to which it applies the rate seems not unduly low.

This leaves for consideration the matters of the deviation from the long-and-short-haul provision of the act and of the disparity of rates between Mason City and Chicago and the other points taking the same rate said by the carriers to exist as a result of the 13-cent rate.

As indicated above, the Northern Pacific asserts that when the 13-cent rate was established from Mason City to International Falls the fact was overlooked that the rate from an intermediate point, St. Paul, was 15 cents. It is evident that these rates are in violation of the fourth section. While the 15-cent rate applies between points both of which are in the state of Minnesota, it was filed by the carriers with this Commission, and it appears to be used in making interstate rates. It does not follow, however, that this situation, which should be corrected, must be cured in the manner suggested by the defendants, namely, by increasing the rate from Mason City to International Falls. If, as we have indicated is the fact, the 13-cent rate is, otherwise considered, a reasonable one, it is not shown to be unduly low by the presence in the carriers' tariffs of a higher rate for a shorter distance. It therefore follows that the situation must be met by readjusting the rate from St. Paul rather than by increasing the rate from Mason City.

This rate of 15 cents from St. Paul is used by the carriers also in illustration of the alleged disparity under the existing situation between the rates enjoyed by the Mason City shippers and those available to the shippers at the Chicago rate points. They observe that in the case of intermediate points south of International Falls, on the lines of the Northern Pacific, while the Mason City shippers have the 13-cent rate the Chicago shippers in some instances have to pay as high as 23 cents—a differential of 10 cents in favor of Mason City. The 23-cent rate is made up of the 8-cent rate from Chicago to St. Paul and the 15-cent rate beyond. The Northern Pacific's and Burlington's 16-cent rate from Chicago, it will be remembered, is a terminal rate only. The same situation, it is alleged, exists with reference to shipments from Duluth to this intermediate territory. The only rates from Duluth available for these shipments are the Northern Pacific's local rates, which under the prevailing scale are in some cases as high as 19 cents. Respecting the Duluth situation, the Northern Pacific has also urged as a reason for canceling the 13-cent rate that its maintenance would necessitate a cut in the present 14-cent terminal rate from Duluth to International Falls, since it could not expect to maintain a higher, or indeed as high, a rate from the head of the lakes as from Mason City.

Following the thought of our observations preceding, it may be said that this discrepancy between the rates from Mason City and Chicago does not prove that the Mason City rate, which otherwise seems reasonable, is unduly low. It would seem that the comparison may as easily warrant the deduction that the Chicago rate and not the Mason City rate is the one out of line. This latter conclusion is given basis by comparison with the rates of other carriers

in the same territory. The circumstance that the Great Northern in the case of its rate for shipments from the Chicago points to International Falls via Duluth gives its 16-cent rate intermediate applications is at least persuasive that the same condition should obtain respecting the Northern Pacific's 16-cent rate. If this were the fact—that is, if the Northern Pacific's rate of 16 cents should apply to intermediate points—the present asserted undue disparity would disappear, as the differential between Mason City and the Chicago points, both with respect to shipments to International Falls and to points south, would then be in every case 3 cents. Answer of the same general character may be addressed to the carrier's argument based on the asserted necessity of readjustment between Duluth and Mason City.

The Northern Pacific proposes a remedy for the alleged disparity between the Mason City and the Chicago rates, which involves, in the main, the cancellation of the 16-cent Chicago rate, as well as the 13-cent rate from Mason City. It would seem sufficient, without entering into a discussion of the details of this proposal, to point out that it is subject to the criticism which we have made above of the carrier's argument as to the existence of the disparity. It assumes that, the disparity existing, adjustment is to be made by increasing the rate from Mason City. With this conclusion we are, as previously indicated, unable to concur, since it has not been proven that the Mason City rate is unduly low.

We are of opinion that neither in the contentions based on the relation of the 13-cent rate to other existing rates in their schedules nor otherwise have the respondents sustained the burden of justifying the proposed increase. They will be required, therefore, to maintain rates not in excess of the existing rates for a period of not less than two years. An order will be entered accordingly.



As indicated above, the Northern Pacific asserts that when the 13-cent rate was established from Mason City to International Falls the fact was overlooked that the rate from an intermediate point, St. Paul, was 15 cents. It is evident that these rates are in violation of the fourth section. While the 15-cent rate applies between points both of which are in the state of Minnesota, it was filed by the carriers with this Commission, and it appears to be used in making interstate rates. It does not follow, however, that this situation, which should be corrected, must be cured in the manner suggested by the defendants, namely, by increasing the rate from Mason City to International Falls. If, as we have indicated is the fact, the 13-cent rate is, otherwise considered, a reasonable one, it is not shown to be unduly low by the presence in the carriers' tariffs of a higher rate for a shorter distance. It therefore follows that the situation must be met by readjusting the rate from St. Paul rather than by increasing the rate from Mason City.

This rate of 15 cents from St. Paul is used by the carriers also in illustration of the alleged disparity under the existing situation between the rates enjoyed by the Mason City shippers and those available to the shippers at the Chicago rate points. They observe that in the case of intermediate points south of International Falls, on the lines of the Northern Pacific, while the Mason City shippers have the 13-cent rate the Chicago shippers in some instances have to pay as high as 23 cents—a differential of 10 cents in favor of Mason City. The 23-cent rate is made up of the 8-cent rate from Chicago to St. Paul and the 15-cent rate beyond. The Northern Pacific's and Burlington's 16-cent rate from Chicago, it will be remembered, is a terminal rate only. The same situation, it is alleged, exists with reference to shipments from Duluth to this intermediate territory. The only rates from Duluth available for these shipments are the Northern Pacific's local rates, which under the prevailing scale are in some cases as high as 19 cents. Respecting the Duluth situation, the Northern Pacific has also urged as a reason for canceling the 13-cent rate that its maintenance would necessitate a cut in the present 14-cent terminal rate from Duluth to International Falls, since it could not expect to maintain a higher, or indeed as high, a rate from the head of the lakes as from Mason City.

Following the thought of our observations preceding, it may be said that this discrepancy between the rates from Mason City and Chicago does not prove that the Mason City rate, which otherwise seems reasonable, is unduly low. It would seem that the comparison may as easily warrant the deduction that the Chicago rate and not the Mason City rate is the one out of line. This latter conclusion is given basis by comparison with the rates of other carriers

in the same territory. The circumstance that the Great Northern in the case of its rate for shipments from the Chicago points to International Falls via Duluth gives its 16-cent rate intermediate applications is at least persuasive that the same condition should obtain respecting the Northern Pacific's 16-cent rate. If this were the fact—that is, if the Northern Pacific's rate of 16 cents should apply to intermediate points—the present asserted undue disparity would disappear, as the differential between Mason City and the Chicago points, both with respect to shipments to International Falls and to points south, would then be in every case 3 cents. Answer of the same general character may be addressed to the carrier's argument based on the asserted necessity of readjustment between Duluth and Mason City.

The Northern Pacific proposes a remedy for the alleged disparity between the Mason City and the Chicago rates, which involves, in the main, the cancellation of the 16-cent Chicago rate, as well as the 13-cent rate from Mason City. It would seem sufficient, without entering into a discussion of the details of this proposal, to point out that it is subject to the criticism which we have made above of the carrier's argument as to the existence of the disparity. It assumes that, the disparity existing, adjustment is to be made by increasing the rate from Mason City. With this conclusion we are, as previously indicated, unable to concur, since it has not been proven that the Mason City rate is unduly low.

We are of opinion that neither in the contentions based on the relation of the 13-cent rate to other existing rates in their schedules nor otherwise have the respondents sustained the burden of justifying the proposed increase. They will be required, therefore, to maintain rates not in excess of the existing rates for a period of not less than two years. An order will be entered accordingly.

No. 5363.

TRAFFIC ASSOCIATION OF ST. LOUIS COFFEE  
IMPORTERS

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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*Submitted May 15, 1913. Decided October 7, 1913.*

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Rate of 23 cents per 100 pounds for the transportation of coffee in carloads from New Orleans, La., to St. Louis, Mo., not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

*Arthur B. Hayes and Charles Conradis* for complainant.

*R. Walton Moore, George Butler, H. G. Herbel, F. G. Wright, and R. V. Fletcher* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a voluntary association of importers and jobbers of coffee at St. Louis, Mo. By petition, filed December 11, 1912, it alleges, in substance, that defendants' rate of 23 cents per 100 pounds on coffee in carloads from New Orleans, La., to St. Louis, Mo., is unreasonable and unjustly discriminatory against St. Louis, subjects the business of complainant's members to undue prejudice and disadvantage, and results in undue advantage to the dealers in coffee at Indianapolis, Ind., in violation of sections 1, 2, and 3 of the act. It is further alleged that complainant's members have shipped coffee in carloads from New Orleans to St. Louis for the transportation of which defendants collected charges based upon said unreasonable and discriminatory rate. The establishment of a reasonable rate for the future and reparation are asked.

Prior to 1901 the ocean rates on Brazilian coffee were lower to New York than to New Orleans. Consequently this traffic was attracted to the port of New York and comparatively little coffee was imported through New Orleans. About the date above mentioned the ocean carriers equalized the rates on coffee from Brazil to said ports, and the resulting increase in importations through New Orleans are illustrated in the following table, presented by defendants,

showing the number of bags of green coffee brought into New York and New Orleans, respectively, for certain years, viz:

Year.	New Orleans.	New York.	Year.	New Orleans.	New York.
1887.....	231,202	2,236,696	1906.....	1,590,274	4,386,698
1897.....	373,409	4,710,524	1908.....	1,815,132	4,574,125
1900.....	336,115	4,887,457	1910.....	2,280,877	4,064,668
1902.....	857,700	6,624,811	1912.....	2,117,884	4,174,966
1904.....	1,050,745	6,033,003			

A bag of coffee weighs approximately 130 pounds; the average loading of a car is about 35,000 pounds; and the value of an average carload of green coffee ranges from \$3,000 to \$4,500, depending upon the market price.

From 1906 to and including 1912 the average annual movement of green coffee from New Orleans to St. Louis was about 25,000 tons. The average price of coffee for the last 10 years was 8.5 cents per pound, and the market price at the date of the hearing was 13.5 cents per pound.

The rate of 23 cents per 100 pounds on green coffee in bags from New Orleans to St. Louis has been in effect since May, 1909. For a few months prior to that date the rate was 22 cents, and prior to that a rate of 20 cents had been in effect seven or eight years, except that during a brief period when a rate war was in progress the rate was lower. It is also alleged that the 23-cent rate is unduly prejudicial to St. Louis and preferential to Indianapolis. The rate from New Orleans to Indianapolis is 25 cents. The short-line distance from New Orleans to St. Louis is 700 miles and to Indianapolis 881 miles. There has been no water transportation of coffee or sugar from New Orleans to St. Louis for about 10 years, except for a very short period during the year 1911.

The rates on green coffee in bags from New Orleans and New York to certain points which are said to compete with St. Louis in the sale of coffee are stated to be as follows, in cents per 100 pounds:

To—	From New Orleans; rail.	From New York.			
		Rail.	Lake and rail.	Canal and lake.	Ocean and rail via Virginia ports.
Chicago, Ill.....	25	30	25	19	26
Indianapolis, Ind.....	25	28	24	.....	24
Peoria, Ill.....	25	33	29	33	29
St. Louis, Mo.....	23	35	31	25	31
Stro, Ill.....	23	35	.....	.....	31
Evansville, Ind.....	23	33	.....	.....	29
Louisville, Ky.....	23	30	.....	.....	26
Cincinnati, Ohio.....	25	26	22	.....	22

Complainant asserts that the 23-cent rate on coffee is unreasonable in comparison with rates from New Orleans to St. Louis of 17 cents on sugar and 15 cents on salt. Its principal argument, however, relates to the 17-cent rate on sugar. Complainant avers that the carriers have recognized the advantage of St. Louis's location on the Mississippi River in the rates on sugar, but have denied her this advantage of location with respect to the rate on coffee.

Complainant contends that the transportation characteristics of sugar and coffee, especially in the matter of value, risk, bulk, weight, and volume of traffic, are substantially similar; that the ton-mile revenue on coffee is high; and that the car earnings thereon could be materially increased by heavier loading of the cars, which is said to be a matter within the control of the defendants.

With respect to the reasonableness of the rate, defendants call attention to the following considerations: They absorb a drayage charge of 2.3 cents per 100 pounds for handling the coffee from ship side to the cars, leaving the net rate only 20.7 cents, which reduces the ton-mile earnings from 6.57 mills to 5.91 mills; coffee rates generally are low; and this rate is below the usual level.

Since May 1, 1909, the rate on coffee from New Orleans to Evansville, Ind., has been 23 cents; to Louisville, Ky., 23 cents; to Cincinnati, Ohio, 25 cents; to St. Louis, Mo., 23 cents; to Chicago, Ill., 25 cents; to Indianapolis, Ind., 25 cents; and to Peoria, Ill., 25 cents. As to other points, defendants submitted a statement of rates, in cents per 100 pounds, and distances from New Orleans, in part as follows:

To—	Rate.	Miles.	To—	Rate.	Miles.
St. Louis, Mo.....	23	700	Dallas, Tex.....	59.5	514
Jacksonville, Fla.....	35	612	Oklahoma City, Okla.....	46	725
Brunswick, Ga.....	35	635	Little Rock, Ark.....	25	538
Charleston, S. C.....	35	771			

The all-rail rates on coffee from New York to the points named below are stated by defendants to be as follows:

To—	Rate.	Miles.	To—	Rate.	Miles.
Dayton, Ohio.....	25	700	Chattanooga, Tenn.....	56	846
Toledo, Ohio.....	23	678	Jacksonville, Fla.....	41	1,015
Charleston, S. C.....	35	765	Atlanta, Ga.....	62	873
Brunswick, Ga.....	41	923	Montgomery, Ala.....	63	1,050

Another table was submitted by the defendants showing the rate, value per car, average loading, and revenue per car. on other com-

modities moving from New Orleans to St. Louis, which is, in part, as follows:

Commodity.	Rate	Value per car.	Average loading.	Revenue per car.
	<i>Cents.</i>		<i>Pounds.</i>	
Coffee.....	23	\$5,245	34,970	\$80.43
Rice.....	24	1,470	42,000	100.80
Molasses.....	21	950	38,000	79.80
Bananas.....	43	803	20,250	87.07
Salt.....	15	300	60,000	90.00
Wire.....	21	4,900	70,000	147.00
Potatoes.....	35	.....	30,000	105.00
Onions.....	38	.....	30,000	114.00

Defendants maintain that the lower rate on sugar is justified by the fact that in the past there has been active and forceful competition for the carriage of that commodity by water; and that, if the sugar rate were advanced, such competition would again appear. The prices of the two commodities fluctuate, and therefore the difference in value is not constant, but from the evidence presented it appears that for equal weight a carload of coffee would be double the value of a carload of sugar. It was further stated that sugar moves in greater volume from New Orleans to St. Louis and that it loads heavier per car than coffee.

Coffee is usually rated fifth class, and the fifth-class rate from New Orleans to St. Louis is 40 cents. Coffee takes the fifth-class rate of 35 cents from New York to St. Louis.

From its brief it appears that complainant considers the rate unreasonable of itself under section 1, unjustly discriminatory, as compared with the rate on sugar under section 2, and unduly prejudicial under section 3, on the theory that it ought to be at least 6 cents less than the rate to Indianapolis.

We are of opinion that the evidence does not sustain complainant's allegation that the rate is unreasonable.

Complainant's argument as to violation of section 2 is based upon the theory that coffee and sugar are like kinds of traffic, that they move under similar circumstances and conditions, and that unjust discrimination results from the difference in the rates on those articles. Sugar and coffee are not like kinds of traffic, within the meaning of section 2, and the carrier contends that the circumstances affecting their carriage are dissimilar. They differ materially in weight, value, space occupied, form of package, and volume of movement. We are of the opinion that the maintenance of different rates on coffee and sugar is not a violation of section 2.

In the *Indianapolis Freight Bureau case*, 15 I. C. C., 567, it appeared that the carriers had increased the rates on sugar and coffee in 1908 from Atlantic seaboard territory and New Orleans to points

in central freight association territory, including Indianapolis, but not to St. Louis and Ohio River crossings. Indianapolis complained of discrimination in favor of St. Louis and said Ohio River crossings. The Commission approved the differential in the rates on sugar resulting from the new adjustment as between Indianapolis and the other points involved, but disapproved of the new relationship between Indianapolis and the said points in the rates on coffee, and ordered defendants to restore the prior relationship, which was based upon a rate from New Orleans to Indianapolis 2 cents in excess of the rate to St. Louis. In compliance with that order the carriers increased the rate from New Orleans to St. Louis from 22 to 23 cents, the rate to Indianapolis being 25 cents.

Complainant maintains that the Commission erred in its finding to the effect that the rate on coffee was not influenced by water competition to the same extent that the rate on sugar was so influenced. It claims that the potential force of water competition is as great with respect to the transportation of coffee as the transportation of sugar, and that St. Louis should have as great a differential under the Indianapolis rate on coffee as on sugar. In fact, complainant's principal grievance appears to lie in the fact that defendants have not been forced by water competition to reduce the rate on coffee to a point where it will equal the rate on sugar. Its argument is to the effect that if water competition leads to a low rate on one commodity the carriers are required by law to make similar reductions on other commodities subject to actual or potential water competition, whether or not such commodities are competitive with each other. We are not aware of any decisions which support complainant's contention to the extent urged by it, nor are we convinced by the record in this case that our conclusions in the *Indianapolis Freight Bureau case*, *supra*, were in error. Consequently our conclusion must be that the 23-cent rate is not unduly prejudicial to St. Louis under section 3.

It follows that the complaint must be dismissed, and it will be so ordered.

No. 4955.

MILWAUKEE MALTSTERS' TRAFFIC ASSOCIATION

v.

GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.

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*Submitted March 13, 1913. Decided November 3, 1913.*

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The defendants' refusal to allow one-fourth cent for the elevation and transfer at Milwaukee, Wis., of barley converted into malt at that place, while paying this allowance for the elevation and transfer of barley and other grain which has been clipped, cleaned, blown, or mixed, does not result in unjust discrimination. Complaint dismissed.

*George A. Schroeder, Charles Conradis, and Arthur B. Hayes* for complainant.

*G. W. Kretzinger and G. W. Kretzinger, jr.,* for Grand Trunk Western Railway Company and Grand Trunk Railway Company of Canada.

*George C. Conn* for Pere Marquette Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is an association composed of manufacturers who buy barley at various places in the west, transport the same to Milwaukee, Wis., convert the barley into malt, and reship the malt on through rates from points of origin of the barley to various points of destination on defendants' lines. By petition, filed June 10, 1912, it alleges that defendants unjustly discriminate against the Milwaukee maltsters by refusing to make them an allowance of one-fourth of 1 cent per bushel for the elevation and transfer at Milwaukee of barley converted into malt at that place, while paying this allowance to grain handlers at Milwaukee for the elevation and transfer of barley and other grain which has been clipped, cleaned, blown, or mixed during the period of elevation.

The defendants (the Grand Trunk lines and the Pere Marquette Railroad) publish tariffs which provide that when grain in carloads, handled under grain transit rules, is weighed, elevated, or transferred from car to car at Milwaukee, Wis., and reshipped over their lines, and the transfer facilities are not owned and operated by them, they will pay the owner or operator of the transfer facilities the cost of the service, but not to exceed one-fourth cent per bushel. Under these tariffs the grain handler at Milwaukee performing the elevation and



transfer is allowed at the same time to clip, clean, blow, or mix the grain, but the allowance is not given to the grain handler who mills or malts in transit. The prayer of the petition is that defendants' tariffs be amended in such manner as to provide for the payment of an elevation allowance on barley malted in transit and transferred through the elevators of the maltsters at Milwaukee in the same manner as is already provided for barley, not malted in transit and transferred through the maltsters' elevators, as well as the elevators of other grain handlers at Milwaukee. The facts of record may be summarized as follows.

Three-quarters of the malt produced in this country is manufactured in the west, and the concerns which complainant represents have an annual capacity of from thirteen to fifteen million bushels of malt. The manufacture of malt in the east is principally by the consumers or brewers. The quantity of malt manufactured in the United States (not including the malt produced by the consumers or brewers) is about sixty million bushels annually. Last year the Milwaukee maltsters shipped about six or seven hundred cars of malt, amounting to about one million and a quarter bushels.

Barley is received at the malting plants in bulk, and the malt is generally shipped out in bags. On the average a bushel of malt weighs 34 pounds and a bushel of barley 48 pounds. From 110 to 112 bushels of malt are produced from 100 bushels of barley, the process of malting resulting in a decrease in weight per bushel and an increase in bulk. The relative prices of malt and barley depend upon various market conditions, but ordinarily malt should sell for 8 or 9 cents per bushel in excess of barley.

In the malting process the barley is ordinarily cleaned twice. It is then steeped in water for about two days, transferred to compartments, and allowed to germinate. After the germination the malt is dried and is subjected to another cleaning process for the purpose of removing small sprouts or roots which the germinating process has caused to grow on the kernel. A bushel of barley produced about 5 per cent of these sprouts, which are used for feed purposes and sell for \$19 or \$20 a ton.

The average time that elapses between the receipt of barley by the maltsters and the shipment of malt is from 25 to 30 days, but barley can be put through the process of malting in 7 days; and this period may be prolonged, according to the method of malting, for 12 days. The grain handlers at Milwaukee who receive the elevation allowance in question may sell barley to eastern brewers or consumers who do their own malting. Complainant's witness expressed the opinion that the grain handlers have an undue advantage over the maltsters,

because the former can give the benefit of the one-fourth cent which they receive for elevation to the eastern brewers or consumers. The witness also stated that the Milwaukee maltsters come in competition with eastern maltsters who buy some of their barley from the grain handlers at Milwaukee who receive the elevation allowance. The witness did not know, as a matter of fact, that the grain handlers give the benefit of the one-fourth cent to the eastern maltsters, but merely stated that such an arrangement was possible.

Complainant contends that the Milwaukee maltsters in elevating their barley in connection with the malting process are performing a transportation service for the defendants for which they are entitled to compensation, and that there can be no valid reason why the maltsters should not be given the same allowance that is given other handlers of grain at Milwaukee, unless the defendants may discriminate between shippers or make the privilege of elevation conditional upon the use to which a commodity is put. Complainant further contends that after barley is malted it still remains a grain and that although there is a chemical change in the barley kernel this change affects neither the form nor appearance of the grain.

The Grand Trunk Western Railway Company and Grand Trunk Railway Company of Canada assumed the burden of defense, and are hereinafter referred to as defendants. They contend that the allowance demanded by complainant is for commercial elevation, which the Commission has no jurisdiction to require, because under the act defendants are required to furnish only such elevation as is necessary to transportation. They state that it is only because the carrier is required to furnish elevation as an incident to transportation that the Supreme Court held in *I. C. C. v. Diffenbaugh*, 222 U. S., 42, and *Union Pacific R. R. Co. v. Updike Grain Co.*, 222 U. S., 215, that incidental advantage to a particular shipper could not operate to prohibit the payment of a reasonable elevation allowance.

Defendants further contend that the allowance given in the tariffs for weighing, transferring, and elevating grain is for transportation purposes only. They state that the cleaning, clipping, mixing, or bleaching of grain at Milwaukee is merely incidental to the transportation, while the malting of grain is a commercial process which not only changes completely the character of the original commodity, but enhances its value, besides producing a valuable by-product. Defendants maintain that there is a broad distinction between a transportation service that may incidentally benefit a commercial process and a commercial process that may in one or more of its elements incidentally coincide with the transportation service. In answer to the allegation of unjust discrimination, defendants contend that the

charge has not been sustained, because no competition, in fact, has been shown. With respect to complainant's statement that the elevation allowance is conditional upon the use to which the commodity is put, defendants admit that they can not make their rates dependent upon the use of the article transported, but they contend that there is not involved in this case one commodity having two or more uses, but two distinct and different commodities; that is, malt and barley. Defendants call attention to the fact that they have given the Milwaukee maltsters through rates and enabled them to perform malting in transit and reach distant markets advantageously, and state that they should not be required to give the maltsters greater opportunities by being compelled to pay them for performing a part of their commercial process.

Complainant contends that the malting of barley at Milwaukee is not commercial elevation, pure and simple, but is incidental to the transportation service performed for the carriers. The cases of *I. C. C. v. Diffenbaugh*, *supra*, and *Traffic Bureau, Merchants' Exchange, v. C. B. & Q. R. R. Co.*, 22 I. C. C., 496, are cited as authority for the claim that the owner of the elevator during the process of transfer or elevation can subject the grain to other processes which are of incidental benefit to him. Complainant also argues that, even conceding that the malting of barley is a commercial process for enhancing its value, this fact does not furnish any argument against granting the allowance, because the process of clipping, mixing, cleaning, bleaching, or grading grain is exactly on the same footing as the malting of grain; that is, they are all commercial operations connected with the elevation of the grain for the benefit of the carrier.

In *In the Matter of Allowances to Elevators by the Union Pacific R. R. Co.*, 12 I. C. C., 85, 87, we defined elevation as follows:

Elevation, as commonly understood among elevator men and among buyers and sellers of grain, signifies the unloading of grain from cars, or from grain-carrying vessels, into a grain elevator and loading it out again after storage for a period of not to exceed ten days. The "treatment," or grading, cleaning, and clipping, of grain is not properly a part of "elevation," as the word is strictly used, and the retention of grain in an elevator beyond the period of ten days becomes storage and is not elevation. It is in this sense that the word is used in the amended statute.

In the rehearing of that case, 14 I. C. C., 315, we endeavored to prevent the payment of an elevation allowance on grain which had been made the subject of commercial elevation by entering an order forbidding the payment of the allowance unless confined to grain that had not been mixed, treated, weighed, or inspected. The Supreme Court in the *Diffenbaugh case*, *supra*, sustained our order as

to the 10-day provision, but enjoined it as to commercial elevation. In the *Traffic Bureau case*, *supra*, we said, interpreting the decision of the Supreme Court in the *Diffenbaugh case*:

As we understand the opinion, it holds that a railroad may employ the owner of an elevator to perform a part of the transportation service which is encumbent upon the railroad, paying a reasonable compensation therefor, and the fact that the owner of the elevator during the process of transfer or elevation can subject the grain to other processes which are of incidental benefit to him does not amount to an undue discrimination.

It will be observed that in order to constitute "elevation" the grain must be loaded out of the elevator as well as unloaded into it. In the present case grain is not loaded out of the elevator, but a manufactured product of grain, more valuable than the original product, is loaded out.

In the case before us the complainants are malting barley in transit, and are thus paying for the transportation of barley inbound and the further transportation of malt outbound a total rate less than the sum of the tariff rates for the two services and equal only to the rate that would be charged for a single service of transportation not including a stop for manufacturing purposes at Milwaukee.

Taking into consideration the entire record, the Commission is unable to find that any allowance to the complainants is required to correct any discrimination in the rates paid by them under the present arrangement.

The complaint must therefore be dismissed, and an order will be entered accordingly.

28 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 225.

DETROIT SWITCHING CHARGES.

*Submitted October 15, 1913. Decided November 4, 1913.*

Carriers have failed to justify the increases in charges for switching at Detroit, Mich., specified in the tariffs of the Michigan Central and Pere Marquette Railroad Companies; their present charges are just and reasonable and should not be exceeded for the future; neither has the Detroit Terminal Railroad justified the increases proposed, but that road is allowed to recast and somewhat increase its present switching charges.

*Hal H. Smith* for protestant.

*Bills, Parker, Shields & Brown* and *George C. Conn* for Pere Marquette Railroad Company and its receivers.

*W. W. Collin, jr.*, and *D. P. Connell* for Michigan Central Railroad Company and Detroit Terminal Railroad.

REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

The tariffs under suspension are those of the Detroit Terminal Railroad, the Michigan Central Railroad Company, and the Pere Marquette Railroad, all of which increase the charges for switching in and about the city of Detroit. The order of suspension was issued in consequence of a protest from the Detroit Board of Commerce, which has appeared in opposition to the increases at all stages of the proceeding.

Apparently all railroads at Detroit voluntarily open their terminals to other railroads entering that city; that is, any railroad will accept from a connection in Detroit carload freight to be delivered upon private sidings upon its own line or upon its own team track, and conversely it will move cars from its own private sidings and team tracks to other railroads in Detroit for shipment to any destination. For these services a switching charge is imposed, which as a rule has been absorbed by the carrier enjoying the line haul, provided the total revenue from the shipment exceeds a certain amount.

These switching services may be of three kinds:

First. The car may be transported by the switching road from a junction with one line to a junction with a second line. This is known as an intermediate switch and the switching line has nothing to do with the delivery of the car.

Second. The car may be moved between a private siding upon the switching road and the junction point with a connecting line.

Third. The movement may be between the team track of the switching road and the junction with the connecting line.

For these services in the past the charges of the Michigan Central and the Pere Marquette seem to have been \$3 when the movement was between lines or to a private siding, and \$4 when the movement was to or from the team tracks of the switching road. These tariffs under suspension propose to increase the charge for the first two movements from \$3 to \$5, and the charge for the last movement from \$4 to \$8.

The Detroit Terminal Railroad is a comparatively new terminal line in the city of Detroit and is sometimes known as the "Outer Belt line." It extends from the water above Detroit, upon the east, toward the water below, upon the west. It is about 14 miles in length and crosses several of the principal lines of railway entering the city of Detroit. The purpose seems to be to finally extend its line to the water, thus completely circling the city and connecting with all railway lines.

The industries served by this railroad seem to be located mainly at the two extremities, and the railroad itself, for tariff and perhaps operating purposes, has been divided into two sections; one known as the east and the other as the west terminal. For a movement between two connecting lines or to a private siding upon the Detroit Terminal the charge has been, at the east end \$3 and at the west end \$3.50. When the movement was from one terminal to another these two charges have been added, making a total charge of \$6.50. In all cases where the movement is to a team track the charge has been increased by \$1. It is now proposed to make a uniform charge of \$6 per car between all points upon the terminal railroad, with an addition of \$1 when the car moves to or from the team tracks of that company.

As already noted, switching charges at Detroit are generally absorbed by the railroad enjoying the line haul, and are not, therefore, paid by the shipper. One of the causes, apparently, which induced business interests at Detroit to object to the proposed increases has been the fear that carriers will not absorb the increased charges and that a portion of the burden will therefore fall upon the shipper. In answer to this the carriers have undertaken to show that if the charges are increased as contemplated nevertheless they will continue to be absorbed by the carriers, and that the question is therefore of no interest to shippers, but really a controversy between the railroads themselves.

This Commission can not dispose of the case upon that theory. We have in the past encouraged the absorption of switching charges. The Commission has been inclined to feel that the ideal condition in a great city like Detroit was that where all lines reciprocally absorbed

28 I. C. C.

switching charges, so that the rate carried with it a delivery to any point within the city limits. We do not now dissent from that proposition, but difficulties may arise and are arising in its application.

It is always difficult to draw the line which bounds the district within which switching charges shall be absorbed. The industry or the locality outside this district feels itself discriminated against when compelled to pay an additional charge. Questions of this kind are reaching us with more and more frequency, and they are often troublesome to answer.

It can not be questioned that the expense of making these deliveries in a great terminal like Detroit is very considerable, perhaps more considerable than is generally supposed. While the reciprocal absorption of switching charges may and usually does substantially offset itself between different carriers so that the actual money payment on that account from one to the other is comparatively small, still the cost of the service must be borne by some one. Where the rate which the shipper pays to his industry is fixed without any reference to the terminal cost, it is evident that he may receive an unfair advantage as compared with the industry located at some point where the expense of the terminal delivery is very much less. If this be true it follows that industries located at great terminals like Detroit, Chicago, and elsewhere may receive a greater service in proportion to what they pay than do their competitors located at country points. The tendency of this is to concentrate business, whereas it might be better on many accounts if it could be more generally diffused.

We find also a very perplexing problem in connection with the terminal railroad when we attempt to place industries served by it upon the same relative basis with those upon the lines of individual carriers receiving the same service at the same points.

It may finally come to pass, for these reasons and many others, that it will be necessary to establish a rate up to the outer or breaking-up yard, in case of cities like Detroit, and to compel every industry to pay a fair charge for the transportation service from that point to the point of delivery. While we do not suggest this as a thing in contemplation, we must not, in passing upon these switching charges, overlook the possibility.

If carriers were to decline to continue absorption of these charges it is not altogether clear just how the situation could be dealt with by the Commission. We must therefore, in passing upon the reasonableness of these increases, consider them as though they were to be charged for by the railroad rendering the service and paid for by the shipper.

If this question be approached in that view, there is in this record no serious attempt to justify the increases proposed in the tariffs of

the Michigan Central and the Pere Marquette which are under suspension. The representative of the Michigan Central testified:

We feel that the cost of conducting our terminals in Detroit has increased so materially during recent years that we must have more revenue to really put it on a basis that would justify the cost that we have to incur in performing the service.

This and similar general statements from various witnesses are all which these defendants show in justification for advancing these switching charges from \$2 to \$4 per car.

This kind of testimony furnishes no justification. It may be that switching charges at terminals like Detroit are generally too low; that the expense of conducting the business and of providing the lands and tracks over which it is conducted is greater than is generally appreciated even by the carriers themselves. But, if so, all this is susceptible of exact proof. If these carriers desire to advance their switching charges at Detroit they must show us, as they readily can, the figures. Let them keep their accounts, if this is not already done, so that they can furnish us the exact cost per car of handling this business at that point, and let these figures be kept in such a way that the examiners of the Commission can verify them. In the near future the Commission itself will ascertain the value of these terminals, and we shall then be in position to know something about the actual cost of the service and from this to better determine the reasonableness of the charge. We ought not to do this upon any general expression of opinion, especially when that opinion is not itself supported by any proper knowledge of the facts.

We hold, therefore, that the carriers have failed to justify the increases specified in the tariffs of the Michigan Central and the Pere Marquette, and we are further of the opinion that the present charges are just and reasonable and should not be exceeded for the future.

This leaves for consideration the Detroit Terminal Railroad, with respect to which the evidence is somewhat more satisfactory.

This road owns no cars. It now has five switching engines of its own. It was claimed by its representative that the amount of money actually invested in this property up to the present time was slightly in excess of \$1,000,000 and the details of this expenditure were shown.

The road has been in operation for 17 months, and the result of operation for this entire period was furnished upon the hearing. The figures given show that under the scale of tariffs above stated the average receipts per car handled have been \$3.61, while the actual expenditures have averaged \$4.92, leaving a deficit of \$1.31, but in reaching this result interest at the rate of 6 per cent on the money invested has been included in operating expenses.

This railroad is controlled through stock ownership by the Grand Trunk, the Michigan Central, and the Lake Shore, three of the



principal lines entering the city of Detroit, and it is manifest that this ownership might, under some circumstances, influence the rates which the subsidiary company should be permitted to charge. It was suggested by the protestant that the proposed increased charges of this company were so high that other lines would decline to absorb them, with the result that a portion or all of the increase must be borne by the shipper, or that traffic would be unduly diverted to the lines of the owning companies. It was further said that the Detroit Terminal had not in all cases permitted a connection with its line and had declined to establish tariffs when such connection had been made.

The construction of this belt railroad was begun by private parties for the purpose of relieving the congestion at railroad terminals in the city of Detroit. The purpose was to enable the industries reached by it to connect with various lines of railway entering the city of Detroit without passing through the city terminals of those lines. This purpose was a laudable one, and apparently the construction of the road will to a great extent accomplish that object. All lines should be permitted to connect with it, and its facilities should be open to all alike upon the same terms. If this is done, we see no reason why this company should not be permitted to charge rates which will yield a fair return upon the fair value of the property devoted to the public service. Should any undue discrimination result in favor of the proprietary lines, or any undue burden be cast upon shippers as this situation develops, that can be corrected; for the present there is no suggestion of such difficulty, provided the rates charged are reasonable and its facilities are open to all who desire to make connection with it.

The figures already referred to show that for the 17 months of its operation there has been a deficit. It must be remembered, however, that this property is in a formative period. The results of operation, in the very nature of things, could not be as favorable during these first months as subsequently. The statement itself shows that the later months have been much more favorable than the earlier months, and there is every reason to believe that upon the scale of charges now in effect a still better showing will be made in the future. It should also be noted that in the operating expenses the interest upon the money invested in the property at 6 per cent has been included.

The present scale of charges upon the Detroit Terminal Railroad should manifestly be revised. Under this schedule, it will be remembered, a charge of \$3 is made for a switch movement in the eastern zone and \$3.50 for a corresponding movement in the western zone. When the movement is across the dividing line from one zone to another these two charges are added together, making a total charge of \$6.50. This, in our opinion, is wrong. The bulk of the expense

in the making of a switch movement consists in the handling of the car at the two ends of the movement. Comparatively little is added in moving the car a few miles even, when once upon the main track. While, therefore, a somewhat higher charge might properly be made when the movement is from one terminal to another, still it ought not to exceed the rate for a movement within either zone by anything like the addition of the full rate for the other zone.

The tariff under suspension proposes to make a uniform charge of \$6 per car for any movement upon the terminal railroad, unless to or from a team track of that road, in which case an additional dollar is charged. If the distribution of industries upon this road were to remain in the future the same as it now is, the fairer method would probably be to preserve the two zones as at present, making a somewhat higher charge when the movement is from one zone to the other. But it is evident that as time goes on industries may be located not only at the extremities, but along the whole length of this belt road, so that movements would occur from one zone to another which would involve no greater expense and ought to bear no higher charge than other movements within a single zone. We are not prepared therefore to dissent from the proposition of this respondent to apply a blanket rate to all movements.

After carefully considering this whole situation we are of the opinion that the Detroit Terminal Railroad has not justified the increase which it proposes to make by its schedules under suspension, but that it may properly recast and somewhat increase its present rates. We are of the opinion that a charge not exceeding \$4.50 per car for a switch movement between all points upon its line would be reasonable.

The testimony indicates that the Detroit Terminal Railroad, in order to induce the location of industries upon its line is providing the private tracks used by those industries at its own expense. The industry bears the cost of the installation at the outset, but this is subsequently repaid by a refund of so much for each car switched. If in point of fact this railroad furnishes the private tracks which serve its industries, there is no apparent propriety in making a greater charge when the delivery is upon a team track than when upon a private track, assuming that this could be properly done in any case, as to which no opinion is expressed.

It should be observed that the rate which we allow is in a sense experimental. Either party is at liberty to again call this matter to the attention of the Commission if the actual result is from any cause widely different from what now seems probable.

An order will be entered in accordance with the foregoing opinion.

INVESTIGATION AND SUSPENSION DOCKET No. 259.  
CLASSIFICATION OF IRON AND STEEL WINDOW  
FRAMES AND SASH.

*Submitted July 21, 1913. Decided November 3, 1913.*

1. The respondents having agreed to so amend their tariffs as to eliminate the changes in classification against which protests were filed, they will be expected to withdraw the suspended tariffs.
2. The protestants ask for reduction in the minimum weight, which it was not proposed to advance. No opinion expressed in this proceeding as to the reasonableness thereof.

*H. G. Wilson* for Monarch Metal Manufacturing Company and Henry Weis Cornice Company, protestants.

*Fred G. Wright* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

*Fred H. Wood* for St. Louis & San Francisco Railroad Company.

*J. M. Souby* and *J. R. Mills* for Kansas City Southern Railway.

REPORT OF THE COMMISSION.

**CLEMENTS, Commissioner:**

In this proceeding the operation of the following tariffs, filed to become effective May 11, 1913, has been suspended until March 8, 1914, pending investigation: F. A. Leland, agent, supplement No. 13 to I. C. C. No. 913; Eugene Morris, agent, supplement No. 13 to I. C. C. No. 349. The effect of the suspended tariffs would be to increase the rates on iron and steel window frames and sash.

Heretofore iron and steel window frames and glazed sash, in straight or mixed carloads, have taken fifth-class rates from interstate points to Texarkana, Tex.-Ark., and points in the states of Louisiana and Texas and the Republic of Mexico. The minimum applicable was 26,000 pounds, except from official classification territory, from which a graduated minimum rule, somewhat similar to rule 6-B of western classification, applied. Unglazed sash in straight carloads took fourth-class rates, minimum 30,000 pounds. The only rates applicable to iron and steel window frames and unglazed sash in mixed carloads was first-class, minimum 10,000 pounds.

The suspended tariffs have the effect of canceling the fifth-class rating on mixed carloads of iron and steel window frames and glazed sash, leaving the former at fifth class, minimum 26,000 pounds, and making the rates on glazed or unglazed sash, in straight or mixed

carloads, fourth class, minimum 26,000 pounds. The object of this change, as explained by respondents, is to correct an anomalous situation in which unglazed sash take higher rates than glazed sash.

Upon protest by manufacturers of these articles the respondents have further considered the matter and are now willing to establish fifth-class rates on window frames and glazed or unglazed sash, in straight or mixed carloads, minimum weight 26,000 pounds, with graduated minima as heretofore from official classification territory. This meets with the approval of the protestants, except that they contend that the minimum on the mixture should not exceed 20,000 pounds, as they state that even on the proposed basis they could not take advantage of the fifth-class rating, due to their inability to load anywhere near the prescribed minimum, and that they would therefore still be under the necessity of using the first-class rating, minimum 10,000 pounds. However, it is not proposed to advance any existing minimum, and as to the reasonableness of the present minimum we shall express no opinion in this proceeding.

We shall expect the carriers to promptly establish the changes now proposed by them.

28 I. C. C.

No. 5734.

HUERFANO COAL COMPANY ET AL.

v.

COLORADO & SOUTHEASTERN RAILROAD COMPANY  
ET AL.

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*Submitted October 21, 1913. Decided November 10, 1913.*

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1. Each carrier subject to the act is charged with the duty of furnishing cars for the transportation conducted over its line.
2. A carrier's obligation to furnish cars for shipments to points upon the lines of its connections is joint with the latter, and contracts with them can not relieve it of its portion of such joint liability.
3. Trackage contract between Colorado & Southeastern Railroad and Colorado & Southern Railway found to cause an undue discrimination against petitioners in the matter of car supply.

*Albert L. Vogl* for complainants and Minnequa Coal Company, intervener.

*Caldwell Yeaman* for Colorado & Southeastern Railroad Company.

*A. S. Brooks* for Colorado & Southern Railway Company.

*E. N. Clark* and *R. G. Lucas* for Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

**MARBLE, Commissioner:**

The subject matter of the controversy here is the body of rules governing the distribution of coal cars in times of car shortage by the Colorado & Southern Railway, the Denver & Rio Grande Railroad, and the Colorado & Southeastern Railroad in the southern Colorado coal fields. This proceeding is supplementary to the proceeding in *Colorado Coal Traffic Asso. v. D. & R. G. R. R. Co.*, 23 I. C. C., 458. There the failure of the Denver & Rio Grande and the Colorado & Southern to provide proper rules for car distribution was considered. The Commission did not undertake in that proceeding to formulate rules for car distribution, but did direct the respondent carriers to publish such rules and to maintain proper records showing the results thereunder. In compliance with this order the two carriers named, after consultation with the shippers to be affected, adopted a set of rules for car distribution which is on the whole satisfactory to the shippers and which, so far as shown, is entirely just and reasonable, except in the respects hereinafter indicated. These rules distribute cars on what is known as the

"idle-hour system." The aim is that all the mines affected shall work the same number of hours per calendar week. Reports are made weekly to the carriers by the operators, showing the time lost, if any, on account of failure of car supply. Whenever it appears that, by reason of such failure, any mine has had more idle hours than any other mine, the basis of distribution is immediately so modified as to equalize the number of idle hours during the next ensuing week. If the Commission may judge by the expressions of the carriers and shippers concerned with this complaint, this method has in it elements of elasticity and prompt adjustability to facts which entitle it to the careful study of all who are dealing with car-distribution problems.

The Colorado & Southeastern Railroad is a short line about 6½ miles long extending in a westerly direction from Barnes, on the Denver & Rio Grande, across the Colorado & Southern at Ludlow to the mines of the Victor-American Fuel Company. These tracks formerly belonged to the predecessor of this fuel company, and were operated by the Denver & Rio Grande and the Colorado & Southern as parts of their railroad systems. The Colorado & Southeastern Railroad Company is an adjunct of the Victor-American Fuel Company, all of its stock being owned by the latter company. It has through routes and joint rates with the Denver & Rio Grande and the Colorado & Southern and their connections, receiving out of such joint rates 10 cents per ton as its earnings upon the shipments of coal made by its proprietary company, which shipments constitute its entire tonnage. This road is alleged by the petition here to be a common carrier. It was so found by this Commission in *Cedar Hill Coal & Coke Co. v. A., T. & S. F. Ry. Co.*, 15 I. C. C., 73. For all the purposes of this proceeding, therefore, it must be so considered.

As recited in *Cedar Hill Coal & Coke Co. v. A., T. & S. F. Ry. Co.*, *supra*, the Colorado & Southeastern also reaches Trinidad, Colo., a point some 14 miles from Ludlow, by use of the rails of the Colorado & Southern. This trackage arrangement, according to the practice now followed, makes Trinidad a point upon the Colorado & Southeastern Railroad and gives that railroad a connection with the Atchison, Topeka & Santa Fe Railway. The contract stipulates, however, that the Colorado & Southeastern shall not engage in business at any point between Ludlow and Trinidad. Such mines, therefore, as are located upon the Colorado & Southern rails between these two points are not in the position of being upon the line of the Colorado & Southeastern Railroad, and have no claim upon that railroad for cars or service.

The Colorado & Southeastern Railroad owns no coal cars and does not undertake any duty as a carrier to furnish cars to the shippers

located upon its line. That duty is undertaken by the Colorado & Southern and Denver & Rio Grande jointly, and under the method of car distribution adopted by these carriers the mines of the Victor-American Fuel Company are viewed as mines upon the lines of the Colorado & Southern and Denver & Rio Grande and share in the car supply of those lines in times of car shortage.

With regard to cars from the Santa Fe, however, the theory of location of the Victor-American mines appears to change. The Colorado & Southeastern Railroad, by reason of the trackage arrangement to Trinidad, is able to secure empty coal cars from the Santa Fe at that point. These cars it hauls over the Colorado & Southern rails to its tracks, and they thus are allotted entirely to the mines of its proprietary company. Commercial conditions at certain times, and the rules of the Denver & Rio Grande and Colorado & Southern at such times, are such that these Santa Fe cars are of peculiar value to shippers. In times of car shortage the Denver & Rio Grande and Colorado & Southern, in order that their supply of cars may not be depleted by diversions, forbid the loading of their cars to points upon the Santa Fe lines. Santa Fe cars, however, must be loaded to such points in order that they may be returned to their owner. There is an extensive market for the coal produced in these mines at such Santa Fe points. The complainants here are frequently unable to fill orders from such points by reason of their inability to secure a supply of Santa Fe cars. By the operation of its trackage arrangement to Trinidad through the medium of the Colorado & Southeastern Railroad the Victor-American Fuel Company, however, has at all times a surplus of Santa Fe cars. While there is some time lost by complainants in times of car shortage through inability to secure cars, the Victor-American Fuel Company's mines have been, with the exception of one mine for one month, so supplied with cars that they have lost no time.

The contention of the Colorado & Southeastern Railroad is that it is a lateral branch line of the Colorado & Southern, also of the Denver & Rio Grande, also of the Santa Fe. It claims to have contractual arrangements with these lines by which it is relieved of any duty to furnish cars for the movement of coal from the mines which it serves, that duty being entirely assumed by its connecting carriers. It also claims that without regard to such contract such duty is placed upon the carriers with which it connects by that portion of section 1 of the act to regulate commerce which reads as follows:

Any common carrier subject to the provisions of this act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reason-

able terms a switch connection with any such lateral, branch line of railroad, or private sidetrack which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper.

In this view of its contractual and legal rights the Colorado & Southeastern claims to be released from that portion of section 1 which, after providing that the term "transportation" shall include cars, reads—

and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor,  
\* \* \*

The rights and duties of these various carriers in the apportionment of available car supply must be determined from the act to regulate commerce and not from any contract which they may choose to make. While there are many matters upon which they may deal with each other with entire propriety, the rights of shippers to adequate transportation and to nondiscriminatory treatment at all times can not be abridged or modified by them. That portion of section 1 which makes it the duty of every carrier subject to the provisions of this act to provide transportation, including cars, upon reasonable request therefor must be read into and made a part of that portion of section 1 which deals with the matter of switch connections between common carriers and lateral branch lines of railroad. A lateral branch line of railroad is entitled to a switch connection without regard to its status as plant facility or common carrier. As first written, the portion of section 1 which provides for such switch connections did not include reference to lateral branch lines of railroad, and its somewhat unnecessary provision that no shipper shall be discriminated against in the matter of car supply was in entire harmony with the preceding portion of the provision. The reference to lateral branch lines of railroad was added in conference between the two houses of the Congress without any modification of the concluding words of the provision prohibiting discrimination against shippers. It is not conceivable that it was intended by such prohibition of discrimination against shippers to relieve any common carrier, lateral branch line or otherwise, of any portion of its duty under the act to regulate commerce. The act provides that a lateral branch line of railroad shall be entitled to a switch connection from "any common carrier subject to the provisions of this act." This means, of course, that a lateral branch line of railroad may be built to connect with a common carrier which is itself a lateral branch line of some other common carrier. Under



the interpretation suggested to us the lateral branch line would be relieved of all obligation to furnish cars to its own shippers, but would be saddled with the entire obligation to furnish cars to all shippers upon the line of the railroad lateral to it. In the case of a lateral branch line with a considerable number of shippers, built to connect with a common carrier having but a small mileage and corresponding car supply, the consequences of such interpretation would be disastrous to shippers.

It is the view of the Commission that each carrier subject to the act is charged with the duty of furnishing cars to the industries located upon its line. In the case of through routes composed of two or more carriers the obligation to furnish cars for transportation over such through routes is joint upon the carriers therein. The law of this case, therefore, is that the Colorado & Southeastern Railroad, so long as it is to be considered as a common carrier, has the duty of furnishing cars for shipments between points on its line if there are any such shipments. Its obligation to furnish cars for shipments to points upon the lines of its connections is joint with such connections, and it can not be relieved of its portion of such joint liability by any contract with such connections.

It may be suggested that under its contract with the Denver & Rio Grande and the Colorado & Southern this Colorado & Southeastern line is really in the position of furnishing cars to its shippers, securing the same by lease from the owners. There can be no objection to this view, and no harm can come from such contract, if proper compensation is paid for the use of the cars, except in times of car shortage. At such times it is the duty of each carrier to distribute its entire equipment to its shippers before disposing of the same by sale, or lease, or otherwise. That is to say, at times when the shippers upon the rails of the Denver & Rio Grande are restricted in their commercial operations by reason of a failure of car supply the Denver & Rio Grande can not lawfully undertake more than its own share of the joint burden of furnishing cars for the through routes which it has helped to form. At such times the Colorado & Southeastern Railroad must take the burden of furnishing cars for all that portion of the through transportation which is performed upon its line; that is to say, it must provide such a supply of cars as would be sufficient to enable it to perform its part therein if there were car-for-car interchange at its junctions. At the same time the equipment of the Denver & Rio Grande and Colorado & Southern must be apportioned equitably between the shippers which they are under a legal duty to serve. This will include not only the shippers situated upon their rails but also the business presented at junction points by other carriers with which they form through routes.

The inclusion of the mines upon the Colorado & Southeastern Railroad in the ratings of the Denver & Rio Grande and the Colorado & Southern works an undue discrimination against the complainants here and tends to deprive them of their rightful share in the available car supply of the carriers upon whose rails they are located. It is also evident that the Colorado & Southeastern is now operated as a plant facility of the Victor-American mines in so far as the matter of car supply is concerned. It is not fulfilling any functions as a common carrier in supplying cars, but is leaving the mines served by it to be regarded as located upon the rails of the Denver & Rio Grande and the Colorado & Southern, just as they were before the incorporation of the Colorado & Southeastern Railroad Company and the sale of the plant facility tracks of the Victor-American Company to it. It is, however, acting as a common carrier in the division of joint rates. Its position is inconsistent and can not be justified.

If the Colorado & Southeastern is to operate as a common carrier, then the car supply of the Denver & Rio Grande and Colorado & Southern will not be depleted by it. Even though the Victor-American mines should work full time and the respondents fail to secure cars to enable them to work full time, there would be no legitimate claim of undue discrimination, because the discrepancies in car supply would then arise only in case of superior service by the Colorado & Southeastern.

If, on the other hand, the Colorado & Southeastern is to continue to operate in the matter of car supply as a plant facility, then the idle-hour system adopted by the Colorado & Southern and Denver & Rio Grande must be applied to all of these mines equally and the mines of the complainants must be enabled to work as many hours in times of car shortage as are the mines of the Victor-American Fuel Company.

The trackage arrangement between the Colorado & Southern and the Colorado & Southeastern, by giving the mines of the Victor-American Fuel Company a larger and more constant supply of Atchison, Topeka & Santa Fe cars than is given to the mines of the petitioners, works an undue discrimination. The Colorado & Southern can not, by making such a contract, relieve itself from its duty to distribute these cars, without discrimination, to all the mines to which it has the duty to furnish cars. If the Santa Fe cars are specially consigned to any mine, Victor-American Fuel Company's or complainants', such consignment may be respected, but the cars delivered in accordance therewith must be counted against the distributive share of the mine receiving them.

The Commission is impressed with the desire of all parties here to reach an equitable and lawful adjustment of the difficulties here discussed. Substantial progress has followed its recommendations in *Colorado Coal Traffic Asso. v. D. & R. G. R. R. Co.*, *supra*. The parties involved should work out an adjustment of this matter in the light of the opinions here expressed. If difficulty is found in reaching such an adjustment, the matter may be reported to the Commission, whereupon the Commission will either institute a general investigation into the entire situation in this field or issue an order herein, as it may be at that time advised.

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No. 5729.

KLAUER MANUFACTURING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted October 15, 1913. Decided November 3, 1913.*

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Present ratings on corrugated iron and steel culverts in western classification No. 51 not found to be unreasonable. Complaint dismissed.

*J. H. Henderson, Dwight N. Lewis, and W. B. Martin* for complainant.

*R. C. Fyfe and O. W. Dynes* for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint, brought by a manufacturer located at Dubuque, Iowa, and prepared under the direction of the Board of Railroad Commissioners of the State of Iowa, challenges the reasonableness of the ratings on corrugated iron and steel culverts in western classification No. 51. The ratings in question, which apply on culverts set up, in packages or loose, nested or not nested, are as follows:

Straight or mixed carloads, any diameter, minimum weight 20,000 pounds, subject to rule 6-B, fourth class;

Less than carloads, 16 gauge or thicker, inside diameter over 48 inches, double first class; over 24 and not over 48 inches, first class; 24 inches or less, second class; thinner than 16 gauge, any diameter, double first class.

The prayer of the petition is that the carload rating be reduced from fourth to fifth class; that the less-than-carload ratings be made to apply on culverts made from plate or sheet 18-gauge or thicker; and that a difference in rating be made between less-than-carload shipments nested and not nested.

It appears that corrugated iron or steel culverts are generally used for drainage on highways and are largely sold to county commissioners. Shipments are made both in carloads and less than carloads, but the larger tonnage moves in the latter way. The sizes run from 8 to 84 inches in diameter and from 10 to 30 feet in length, averaging from 16 to 20 feet. The sheet or plate is as thin as 32 gauge, the higher the gauge the thinner the material. Complainant's testimony is to the effect that 18 gauge is used only for culverts 10 inches or less in diameter. Culverts are loaded both in box and flat cars, depending on the sizes and the amount to be loaded. It is also testified by complainant that less-than-carload shipments are usually of two or more sizes, and that in most cases it is possible to nest them. The 18-gauge sheet or plate is one-twentieth of an inch in thickness; the 16 gauge one-sixteenth, or 20 per cent heavier. The value of culverts depends upon their weight and can generally be figured at 4½ cents per pound. The sheet or plate from which they are manufactured costs in the neighborhood of 3 cents per pound.

In official classification territory culverts in carloads take fifth-class rating, minimum weight 24,000 (subject to rule 27), and the prayer of complainant for a reduction in the western classification rating appears to be based largely upon the difference in rating in the two classifications, it being alleged that because thereof complainant is at a disadvantage in competing with manufacturers located in official classification territory.

The present less-than-carload ratings are identical with those in official classification No. 40, and, it is testified by defendants, were established after conferences with the culvert manufacturers, who recommended that 16 gauge be made the minimum thickness for the lower ratings, for the reason that those made of thinner material were not satisfactory, and therefore were not manufactured to any extent. This was a compromise on the part of the carriers, who thought the limit for the lower ratings should be 12 or 14 gauge.

It is further contended by defendants that there is no reason justifying lower ratings on culverts when nested than when not nested; that the manufacturers generally agreed that nesting was frequently injurious; and that nested culverts of the larger sizes are much more difficult to handle than the individual culverts, loading and unloading usually being done by hand.

As has been said by the Commission in several cases, classification, from its very nature and use, can not be so minute as to do mathematically exact justice to every variety of commerce that may move. It appears that the carriers, in considering the western classification, have endeavored to give culverts less-than-carload ratings which would fit the general situation presented, and that the ratings so fixed are satisfactory to culvert manufacturers generally. The highest gauge in common use was made the minimum thickness on which the lower ratings would apply, and the fact that a certain amount of 18-gauge culverts of the smaller sizes is manufactured and takes a higher classification rating is not sufficient, in the absence of a showing of unreasonableness or of undue discrimination forbidden by the act, to justify the Commission in condemning the existing provisions. We are unable to make such a finding on the facts before us.

The carload rating on culverts was considered *In the Matter of the Suspension of Western Classification No. 51, I. C. C. No. 9; 25 I. C. C., 442.* Western classification No. 51 changed the rating from fifth to fourth class and the minimum from 30,000 to 20,000 pounds, subject to rule 6-B, which provides for graduated minima, depending upon the size of the car. The Commission permitted the advance to become effective, and there is no evidence in the case before us to justify a finding of unreasonableness in the present rating.

In view of the above findings the complaint will be dismissed, and it will be so ordered.

28 I. C. C.

No. 5676.

SPRINGFIELD COMMERCIAL ASSOCIATION, OF SPRINGFIELD, ILL.,

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

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*Submitted November 6, 1913. Decided December 1, 1913.*

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At present Peoria, Ill., takes 110 per cent of the New York-Chicago rate on traffic to and from the east, while Springfield, Ill., is in 117 per cent territory; upon complaint insisting that Springfield should be placed in the Peoria group; *Held*, That if Peoria enjoys a rate of 110 per cent, the rate to Springfield should not exceed 113 per cent.

*Frank Lyon* for complainant.

*W. W. Collin, jr.*, for New York Central lines, Pennsylvania Railroad Company, Pennsylvania Company, and Wabash Railroad Company.

*Edward Barton* and *S. S. Stewart* for Baltimore & Ohio Railroad Company and Cincinnati, Hamilton & Dayton Railway Company.

*N. S. Brown* and *H. E. Watts* for Wabash Railroad Company and its receivers.

*A. P. Humburg* for Illinois Central Railroad Company.

*C. D. Whitney* for Chicago, Peoria & St. Louis Railroad Company.

REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

It is familiar knowledge that rates between trunk line territory and New England, upon the one hand, and central freight association territory, upon the other, are stated in percentages of the New York-Chicago rate. At the present time Peoria, Ill., is in 110 per cent and Springfield, Ill., in 117 per cent territory. This complaint, brought by the commercial interests of Springfield, attacks this present relation, insisting that Springfield should be placed in the Peoria group.

In support of this contention certain business men of Springfield were produced as witnesses upon the hearing, who testified that the rates paid by them in their business were substantially higher than would be paid if Peoria rates were applied at Springfield, and that this laid upon the industries of Springfield a serious handicap as compared with Peoria.

One of the industries represented was the Springfield Boiler & Manufacturing Company, and the testimony of its representative may be referred to as typical. This witness stated that his company drew its raw material, mainly iron of various kinds and forms, from the east, and that the rate to Springfield was 2 cents per 100 pounds more than the corresponding rate to Peoria. This, on the volume of his business, amounted to something over \$2,000 per year. About 25 per cent of the manufactured product was sent back to the east under a rate higher than that from Peoria. The balance was shipped into territory where the rate was the same.

It fairly appears that so far as the item of freight rates is concerned this industry is at a disadvantage of several thousand dollars per year as compared with a similar industry located at Peoria. It may be that other advantages at Springfield offset this disadvantage, but clearly there is a substantial handicap against Springfield in the matter of freight rates, and this must be so as to most kinds of business; for, while rates from the east to Springfield are higher than to Peoria, those to the west are usually the same from both cities. To this there is an exception in the case of agricultural machinery and some other manufactured articles which take a lower transportation charge from Springfield. *Avery Manufacturing Co. v. A. T. & S. F. Ry. Co.*, 16 I. C. C., 20. The testimony of the complainant establishes what, indeed, appears from a mere inspection of the tariffs—namely, that the present adjustment of rates imposes a substantial burden upon Springfield as compared with Peoria.

The complainant contends in the second place, and this is the point most insisted upon, that Springfield is entitled to the same rate as Peoria by virtue of its location.

It is well understood that these percentage rates are based upon distance. Without restating here the exact method which was employed, it is sufficient to say that rates to the various percentage groups are determined by short-line mileage to the more important points located within those groups. East of the Indiana-Illinois state line, which, roughly speaking, marks the western boundary of 100 per cent territory, these groups have been worked out in great detail. Hardly any whole number between 100 and 70 can be found which does not represent some group in this territory, and, while it is not true that every point in these groups is given exactly the rate to which its distance would entitle it, still with respect to most of the groups, and the principal points in those groups, this is true.

West of the Indiana-Illinois state line the distance scale was not applied to the same extent or with the same minuteness. These groupings were established in their original form in 1877, and at that time the traffic of Illinois was neither as heavy nor as highly com-

petitive as it is to-day. Peoria was then the principal town west of Chicago; the distance from New York to Peoria was 110 per cent of that to Chicago, and Peoria was accordingly given the 110 per cent rate. Most of the territory between Peoria upon the west and the Indiana-Illinois line upon the east was thrown into one broad group, taking the 110 per cent rate. It is believed that at first no other rate was applied within all this territory, but subsequently, upon the insistence of certain localities, two or three towns were given lower rates. Aurora, for example, takes a rate of 104 per cent.

There are numerous small groups upon the western border of the 110 per cent group taking rates of 112 per cent, 115 per cent, and 116 per cent, but most of the territory west and south of the 110 per cent group was thrown into three large groups, with rates of 116 per cent, 117 per cent, and 120 per cent.

The distance from New York to East St. Louis is 116 per cent of that to Chicago, and originally East St. Louis was given a 116 per cent rate. Subsequently, when rates to St. Louis and East St. Louis were made the same, this was increased to 117 per cent and the bridge toll to St. Louis abolished. Springfield is in the St. Louis group and takes the same rate, although the distance to Springfield is about 60 miles less than to St. Louis.

The short-line distance from New York to Springfield is only very slightly in excess of that to Peoria, and the average distance from the Atlantic seaboard to these two cities is approximately the same. The defendants claim, and it is probably true, that lines reaching Peoria are somewhat stronger than those reaching Springfield.

It is also urged by the defendants that the same system connects Peoria with the Atlantic seaboard in two instances, while in all cases the haul to Springfield is over two lines. It is urged that more is properly charged for the two-line than for the single-line haul. This Commission has often so held, for the cost of the service is more, but the testimony in this case shows that in applying the distance scale in all other instances the short line has been taken without reference to whether it was made up of one or two independent roads. The complainant very pertinently inquires why the defendants ought not to apply at Springfield the same rule which has been uniformly applied in other localities.

The most embarrassing questions with which this Commission is confronted are those of the character here presented. If group rates are to exist there must be discrimination; when does that discrimination become undue and therefore unlawful?

These two cities are but 60 miles apart. Peoria has a population of 75,000; Springfield of 55,000. They compete in many important



particulars. Their freight rates to the west are for the most part the same. The distance from eastern markets is approximately the same, but Springfield is perhaps at some disadvantage in the strength of the lines which serve it. The rates from the east to Springfield are approximately 6 per cent higher than to Peoria. The business men of Springfield testified that under these circumstances they had been unable to locate industries at Springfield; and while it can not perhaps be certainly known that failure in any particular case was due to this cause, still such a disadvantage in transportation charges must certainly be a serious handicap to any locality.

We are reluctant to interfere with these percentage groups. To change the relation of Springfield will probably require a change as to several other localities and a general recasting of these groups in southwestern Illinois. But we are unable to resist the conviction that the disparity is too wide.

We are of the opinion that rates from eastern destinations to Springfield ought not to exceed those to Peoria by as much as do those at present in effect. If new groups are to be formed, we are not prepared to hold that Springfield may not properly be placed in somewhat higher territory than Peoria. If Peoria enjoys a rate of 110 per cent, that to Springfield should not exceed 113 per cent. Since this holding will probably require changes at other points as well as at Springfield, no order will be made, but the defendants will be given until February 1 in which to present to the Commission some proposition for a readjustment of these tariffs.

28 I. C. C.

No. 5190.  
GEORGE H. LEE COMPANY  
v.  
ILLINOIS CENTRAL RAILROAD COMPANY.

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*Submitted February 4, 1913. Decided May 5, 1913.*

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Second-class rate with 12,000-pound minimum for the transportation of incubators and brooders in mixed carloads from Omaha, Nebr., to Memphis, Tenn., found unreasonable to the extent that it exceeded the third-class rate, with 18,000-pound minimum. Reparation awarded.

*C. E. Childe* for complainant.  
*A. P. Humburg* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation, with principal office at Omaha, Nebr., and is engaged in the manufacture and sale of incubators, brooders, and poultry supplies. In its petition, filed September 20, 1912, it alleges that defendant charged an unreasonable and unduly discriminatory rate for the transportation of a mixed carload of incubators and brooders from Omaha to Memphis, Tenn., in November, 1911. Reparation and the establishment of a reasonable rate for the future are asked.

Complainant's shipment weighed 26,880 pounds and charges were collected in the sum of \$180.10 at the second-class rate of 67 cents per 100 pounds. The invoice value of the shipment was \$2,324.30, and it was loaded into a 60-foot car. It is complainant's contention that the rate of 67 cents was unreasonable, because at the same time the defendants maintained a rate of 32 cents on furniture and agricultural implements from Omaha to Memphis. It does not appear that there is any competition between incubators and brooders and furniture or agricultural implements. The value of the furniture and implements with which complainant seeks to make comparison is about one-half that of the shipment of incubators and brooders. The volume of shipments of furniture and implements as compared with complainant's products does not appear. We are unable to find that because a lower rate is maintained on furniture and agricultural implements the rate charged on this shipment was unreasonable.

When the shipment moved, the western classification contained the following ratings:

	L. C. L.	C. L.
Incubators and brooders:		
Boxed or crated, min. c. l. wt. 12,000 lbs. (subject to rule 6-B).....	1	2
In the white, min. wt. 12,000 lbs. (subject to rule 6-B).....		2
K. d. flat, boxed, min. c. l. wt. 30,000 lbs.....	2	6

The class rates, in cents per 100 pounds, from Omaha to Memphis were as follows: First class, 82; second class, 67; third class, 47; fourth class, 34; fifth class, 29.

Complainant asserted that it was impossible to knock down flat for shipment the incubators made by it; that so far as known, no incubator was manufactured that could be knocked down flat; that the provisions of the tariff could not be literally complied with by any shipper; and that the shipments made by it were boxed in such a way as to fairly entitle them to the fifth-class rate. It appears from the evidence that there are incubators on the market that can be knocked down flat. In *Texas Seed & Floral Co. v. N. Y. C. & St. L. R. R. Co.*, 23 I. C. C., 504, the Commission had under consideration the transportation of incubators and brooders in mixed carloads from Buffalo, N. Y., to Dallas, Tex. On the evidence of record in that case and the agreement of the parties it was the conclusion of the Commission that 24,000 pounds of incubators and brooders could be loaded in a standard 36-foot car, and it required the establishment of that minimum on these commodities from Buffalo to Dallas, when shipped in mixed carloads, crated or boxed, with detachable parts removed, subject to the fourth-class rate. The record in this case shows that it is impossible to load in a 36-foot car 24,000 pounds of incubators and brooders of the kind that can not be knocked down flat; that 18,000 pounds of brooders and incubators can be loaded in a 36-foot car; and that as a result of elaborate investigation of the subject by the uniform and western classification committees the following ratings have been adopted and are now in effect:

Brooders, s. u., or with legs detached or folded against body, k. d., flat or folded flat, in boxes or crates, and incubators, s. u., or with legs detached and folded against body, in boxes or crates, mixed c. l., min. weight 18,000 lbs., subject to rule 6-B.....	3
Brooders, k. d. flat or folded flat, in boxes or crates; and incubators, k. d., flat, in boxes, mixed c. l., minimum weight, 24,000 lbs., subject to rule 6-B.....	4

NOTE.—Ratings include the equipment of heating apparatus which when detached must be in barrels, boxes, or crates.

Upon consideration of all the facts of record, we are of opinion and find that the second-class rate applied to complainant's shipment was unreasonable to the extent that it exceeded the third-

class rate of 47 cents, with a minimum of 18,000 pounds, for a standard 36-foot car, and that a rate on this basis should be maintained as a maximum for the future. Under rule 6-B of western classification the minimum for a 60-foot car would be 30,960 pounds.

We further find that complainant made the shipment described in the foregoing statement of facts and paid charges thereon at the rate herein found unreasonable; that complainant has been damaged to the extent of the difference between the amount which it paid, and the amount which it would have paid at the rate and minimum weight herein found reasonable; and that it is, therefore, entitled to an award of reparation in the sum of \$34.59 with interest from December 14, 1911. Inasmuch as the rate and minimum herein found reasonable have now been incorporated in the western classification, it is not deemed necessary to make an order for the future.

28 I. C. C.

No. 5530.  
UNITED STATES OF AMERICA  
*v.*  
UNION PACIFIC RAILROAD COMPANY ET AL

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No. 5530 (Sub-No. 1).

SAME

*v.*

SAME.

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*Submitted August 31, 1913. Decided December 1, 1913.*

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On complaints of the United States government that the failure and refusal of defendants to establish through routes and joint rates between Chicago, Ill., and other points and Oregon Short Line Railroad stations via the Northern Pacific Railway and via the Atchison, Topeka & Santa Fe Railway subjects those carriers to undue prejudice and disadvantage, deprives the government of the full benefit of land-grant deductions reserved to it by statute, and defeats the spirit and purpose of the so-called public highways acts; *Held*, That the allegations of undue prejudice and disadvantage are not sustained; that existing through routes via the Union Pacific Railroad are not shown to be unreasonably long, inadequate, or unsatisfactory; that the Union Pacific and Oregon Short Line railroads are operated jointly and under a common management or control, and no facts are shown which overcome the clear intent of section 15 of the act; that the Commission is not empowered to require carriers to grant to the United States free transportation or other rates or concessions than those afforded the general public, and is not deprived of jurisdiction to consider the merits of a controversy by absence of affirmative showing of the right of the officer presenting the complaint to do so in the name of the United States. Complaints dismissed.

*W. T. Thompson* and *H. B. Cox* for complainant.

*H. A. Scandrett* for Union Pacific Railroad Company and Oregon Short Line Railroad Company.

REPORT OF THE COMMISSION.

*CLARK, Chairman:*

In No. 5530 complainant seeks an order requiring defendants to establish through routes and joint rates between Chicago, Ill., Milwaukee, Manitowoc, and Superior, Wis., St. Paul and Duluth, Minn., and points taking the same rates and stations on the Oregon Short Line Railroad, applicable via the Chicago & North Western Railway, the Minneapolis, St. Paul & Sault Ste. Marie Railway, and the Northern Pacific Railway through Butte, Mont.

In No. 5530 (Sub-No. 1) the prayer is for the establishment of through routes and joint rates between Chicago, Rock Island, and Quincy, Ill., Clinton and Burlington, Iowa, St. Louis, Kansas City, and St. Joseph, Mo., Atchison and Leavenworth, Kans., and points taking the same rates, and stations on the Oregon Short Line Railroad via Atchison, Kans., and the Atchison, Topeka & Santa Fe Railway, in connection with the Denver & Rio Grande Railroad at Pueblo or Denver, Colo., and the Oregon Short Line Railroad at Salt Lake City or Ogden, Utah.

Between all of the points referred to and Oregon Short Line stations there are now in effect through routes and joint rates applicable via Union Pacific Railroad eastern terminals, viz:

(1) Council Bluffs, Iowa, Kansas City, Mo., Leavenworth, Kans., Omaha, Fremont, or Norfolk, Nebr.; or—

(2) Kansas City or St. Joseph, Mo., St. Joseph & Grand Island Railway, Grand Island, Nebr., and Union Pacific Railroad; or—

(3) St. Louis & San Francisco Railroad, Ellsworth, Kans., and Union Pacific Railroad.

It is not contended that these through routes are in anywise inferior or unreasonably long or that the service is unsatisfactory, nor is it alleged that the joint rates via such routes or the combination rates which now obtain via the proposed routes are excessive or unreasonable. The sole contentions are that the failure and refusal of defendants to establish and maintain through routes and joint rates via the Northern Pacific Railway and Atchison, Topeka & Santa Fe Railway subjects those carriers to undue prejudice and disadvantage, contrary to the provisions of section 3 of the act, gives to the Union Pacific a monopoly of the freight traffic from the points named to Oregon Short Line stations, deprives the United States of the benefit of land-grant deductions reserved to it by statute on property transported for it over portions of the lines of the Northern Pacific and the Atchison, Topeka & Santa Fe railways, and defeats the spirit and purpose of the so-called public highways acts.

In its answer, the Northern Pacific Railway specifically denies that the present situation results in any undue prejudice or disadvantage to it, and there is no testimony showing that defendants otherwise make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or to any particular description of traffic. The sole issue is that arising under section 15 of the act which authorizes the Commission within certain limits to establish through routes and maximum joint rates.

The position of complainant as stated in its brief is:

In making this petition for the establishment of through routes and joint rates, the complainant asks only that the same be established for shipment of freight by the United States, and does not contend for the establishment of the  
28 I. C. C.

said routes and rates for the general public, leaving the question as to whether such routes and rates, if established, would be available to the general public to the Commission, the complainant having no interest therein.

\* \* \* \* \*

The complainant in this case, therefore, on account of its sovereignty and on account of public policy is not to be placed on a plane with the ordinary shipper in the consideration of the issues involved herein, and we maintain that the Commission can find ample ground on which to base a favorable decision on complainant's petition in the fact that the Congress has seen proper to reserve to the United States certain rights and benefits in connection with the transportation of its freight over land-grant railroads, and that such statutes should, for reasons of public policy, be given the fullest force and effect.

The fact that this proceeding was instituted by the auditor for the Interior Department, and that it does not appear that any executive or superior officer or lawfully empowered department of the government authorized such action to be taken in the name of the United States presents in the view of defendants reason for dismissal. Counsel for petitioner states, however, that while the officer signing the petition could not institute a suit in a United States court without authority from the Department of Justice, such authority is not a prerequisite in proceedings before this Commission. The provisions of the act with respect to those who may apply to the Commission concerning things done or omitted to be done by common carriers subject thereto are broad. Primarily our authority is over the subject matter of a complaint and the parties complained of. In this instance the proper parties defendant are before us, full hearing has been had, and the material facts have been presented, and we are not deprived of jurisdiction to consider the merits of the controversy merely because delegation to the officers presenting the complaint of the right to do so in the name of the United States is not affirmatively shown.

It should be understood that while the Union Pacific Railroad, Northern Pacific Railway, and Atchison, Topeka & Santa Fe Railway, respectively, are the longest and most important lines in the routes discussed, numerous carriers operate varying routes between the points of origin named and the termini of these three leading lines. As to the main issues, designation of these carriers is not essential, and the leading lines and their connections will hereinafter be referred to as Union Pacific routes, Northern Pacific routes, and Atchison, Topeka & Santa Fe routes.

Certain of the roads from Chicago and other points to Council Bluffs, Omaha, and other eastern termini of the Union Pacific Railroad are land-grant roads the net rates of which are equalized by the other carriers between these points. The Union Pacific is not a land-grant deduction road, hence the through rates via the existing Union Pacific routes are subject to land-grant deductions only as

to the proportions accruing to the routes east of the Union Pacific termini. The Northern Pacific main line westward to Logan, Mont., is subject to land-grant deductions, as is also the Atchison, Topeka & Santa Fe line from Atchison, Kans., to the Kansas-Colorado state line. The present through rates in connection with these roads are combination rates, which are materially higher than the joint rates via the Union Pacific routes. The United States has the right to route its shipments via these roads if it so desires, and inasmuch as the local rates in the aggregate are higher than the proposed joint rates, the government's land-grant proportions of the present rates are higher. In many cases the land-grant deductions result in lower net charges on traffic routed via the Northern Pacific and Atchison, Topeka & Santa Fe at the present rates than the joint rates paid by other shippers on traffic moving via the Union Pacific through routes.

As has been said complainant has no fault to find with the present joint rates via the Union Pacific routes, and in seeking the establishment of joint rates less than the existing through rates via the other routes does not allege or attempt to prove that the latter are unreasonable. It suggests no other advantages to be derived from and has no other reason for demanding the additional routes and lower joint rates than the resultant greater land-grant deductions and lower net charges to the government. We deem it unnecessary, therefore, to enter into detail with respect to the measure of any of the present rates.

The actual point of interchange between the Northern Pacific and the Oregon Short Line is Silver Bow, Mont., a station about 7 miles west of Butte. From Duluth, Minn., the distance, via the Northern Pacific through Silver Bow or Butte, to Pocatello, Idaho, a representative Oregon Short Line point, is approximately 127 miles less than via the present Union Pacific route. From St. Paul via the Northern Pacific, Butte and the Oregon Short Line the distance is 1,390 miles, while the shortest present through route via the Chicago, St. Paul, Minneapolis & Omaha Railway, Norfolk, Nebr., Union Pacific and Oregon Short Line, is 1,373 miles, or a difference of 17 miles in favor of the present route. From all other given points to Pocatello, the Union Pacific routes are shorter than the proposed Northern Pacific routes, the difference varying from 243 miles to approximately 700 miles.

In comparison with the proposed routes in connection with the Atchison, Topeka & Santa Fe, the distances via existing Union Pacific routes are less in every instance, the differences ranging from 113 miles in the case of Kansas City to 299 miles in the case of Chicago. The mileages for the Atchison, Topeka & Santa Fe routes are figured via the Union Pacific from Colorado common points to



junctions with the Oregon Short Line. Via the Denver & Rio Grande, the route suggested by petitioner, to Ogden or Salt Lake City, Utah, thence the Oregon Short Line, the mileages would be greater and the spread in favor of the present routes consequently wider.

It was stated that, at the time of the hearing, the Union Pacific was about ready to throw open a newly constructed line or cut-off by means of which the distance between Kansas City, Mo., and Cheyenne, Wyo., and points west thereof, would be shortened approximately 100 miles, thus giving to the Union Pacific routes this added advantage of mileage. Distance is an important element in determining whether routings are or would be satisfactory, and in these proceedings this element weighs against the establishment of the proposed routes.

During the year 1912 the several branches or bureaus of the Interior Department, exclusive of the Reclamation Service, gave to the Union Pacific shipments from all points destined to Oregon Short Line stations, which aggregated in weight 166,543 pounds. The total charges thereon were \$2,952.87, of which \$903.57 accrued to the Oregon Short Line. For the same period shipments of the Reclamation Service from Missouri River points and points east thereof destined to Oregon Short Line stations, routed via the Union Pacific, aggregated in weight 4,130,577 pounds. The total charges paid were \$35,818.37, of which \$11,008.57 accrued to the Oregon Short Line.

The Union Pacific and Oregon Short Line roads have a contract with the government with respect to shipments for account of the Reclamation Service under which the carriers agree:

To transport over their own lines, as shown in the Official Railway Guide, the machinery, materials, and supplies used on said projects at the lowest of the following described rates in effect at the time of shipment:

(a) Any special commodity rate applying to the particular commodity transported.

(b) Pacific coast terminal rates as shown in the published transcontinental tariffs.

(c) Tariff rates less land-grant deductions.

(d) One-half regular published local class rates or one-half the company's earnings on the basis of through class rates, depending on whether the shipment is a local or through shipment.

It will be seen that the government, under this contract, is entitled to exercise the option which will give it the lowest rate, and it is stated that from time to time this right is exercised as to all of the options. It is admitted that this contract affords lower rates than would obtain under land-grant deductions. In the circumstances the interests of the Reclamation Service, which as to traffic via the routes in question very largely outweigh all others of the Interior Department, are already liberally provided for. The tonnage fur-

nished by the other branches of the Interior Department is not sufficient in volume to leave any definite impression as to the merits of any of the routes.

We are furnished with no information of tonnage other than government freight via the Union Pacific routes, and have no data either as to past performances or the future with respect to the volume of traffic, government or otherwise, via the Northern Pacific or Atchison, Topeka & Santa Fe routes.

The Butte gateway has never been opened as a through route under joint rates, and the testimony is that in the knowledge of defendants the instant cases comprise the only complaints made against the present routes and the only demands for the opening of other routes to and from Oregon Short Line stations.

In recent years much of the line of the Union Pacific has been re-ballasted, grades and curvatures have been eliminated, and a large part of the line has been double-tracked. Similarly double tracks have been laid on much of the line of the Oregon Short Line, thus affording a highly efficient route for through traffic.

In addition to daily merchandise cars for concentrated less-than-carload freight from St. Louis, St. Joseph, Council Bluffs, Kansas City, and Denver to Pocatello, the Union Pacific operates daily from Chicago to Pocatello five merchandise cars. At Pocatello these cars are broken up, and the freight is loaded in local route cars for other Oregon Short Line stations. Such cars would run light and would probably have to be discontinued for want of tonnage were additional routes opened and the freight distributed. This service is cited as an indication of the adequacy of the present routes.

The stock of the Oregon Short Line Railroad is owned by the Union Pacific Railroad. They have the same executive officers and passenger traffic manager, maintain joint agencies throughout the country, and are operated under a common management or control. To require the Oregon Short Line to unite in the establishment of through routes in connection with the Northern Pacific at Butte or Silver Bow, or with the Atchison, Topeka & Santa Fe in connection with the Denver & Rio Grande at Salt Lake City or Ogden, would be to entirely exclude the Union Pacific from participation in the traffic contrary to the prohibition of section 15 of the act against requiring any company without its consent to establish a through route, and to embrace in such through route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established. The prevailing through routes which embrace sub-

stantially all of the line of the Union Pacific and Oregon Short Line railroads between the several termini are materially shorter than the routes proposed, and we are unable to find on this record any set of facts which overshadow the clearly expressed purpose of the act. And if this provision of the law would effectually bar us from requiring the establishment of the desired routes on petition of any others, we are convinced that it just as effectually disposes of the contention of the United States.

In so far as the laws administered by this Commission are concerned, the right of carriers to transport government property free or at reduced rates is elective and not mandatory. The carriers may, and frequently do, avail of this right and without tariff authorization, but this Commission is not empowered to require carriers to grant to the United States free transportation or other rates or concessions than those afforded the general public. No duties are delegated to us under, and we can not assume to interpret or determine the purpose or scope of, the so-called public highways act or of statutes under which rights and privileges may be reserved to the United States in return for subsidies in lands or bonds or loan of credit. If the denial of the through routes and joint rates here sought tends to deprive the government of the full benefit of land-grant deductions reserved to it by statute, remedy must be sought at other hands than ours.

We hold that no preferred parties or special interests, even though pertaining to the extraordinary functions of government, are entitled to special consideration in the administration of those portions of section 15 of the act here involved, and that the record does not otherwise justify the granting of petitioner's prayers. An order will be entered dismissing the complaints.

28 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 310.

SCRAP IRON RATES BETWEEN CHICAGO, ILL., AND  
OTHER POINTS AND RACINE, MILWAUKEE, WIS., AND  
OTHER POINTS.

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*Submitted November 21, 1913. Decided December 12, 1913.*

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Proposed increase in the rate on scrap iron between Milwaukee, Wis., and Chicago, Ill., in both directions, not justified, but a maximum rate of 3 cents per 100 pounds established for the future.

*Gill & Barry* for protestants.

*O. W. Dynes* for respondent.

REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

The rates under suspension are those on scrap iron between Milwaukee and Chicago. The present tariff is 50 cents per gross ton; the proposed tariff 70 cents.

The respondent seeks to justify the higher rate by showing that its earnings under the present rate are insufficient. It appears that there is a considerable movement of scrap iron between Chicago and Milwaukee in both directions, although the respondent is not a heavy carrier of this business. During the months of August and September, 1913, those being the two months next preceding the date of the hearing, 31 cars moved from Chicago to Milwaukee. For the handling of these carloads the respondent collected \$600.29, but of this it paid in the way of absorption switching at Chicago \$268.64, leaving as revenue to the respondent \$331.65. The average loading of these cars was 86,150 pounds, the average per-car-mile earnings to the respondent 12.53 cents, and gross earnings per car of \$10.70. The distance is 85 miles.

Scrap iron is a very low grade commodity which loads heavily and which should therefore move under a low rate. The evidence shows that the respondent is maintaining rates of 50 cents per gross ton upon pig iron, steel rails, ingots, and rolling-mill products, a rate of 45 cents upon coke and 60 cents upon coal. Taking into account the value of the commodity and the conditions of transportation, most, if not all, of these articles should take a higher rate than scrap iron. The respondent states, however, that while it hopes to be able to increase these rates in the future, it has been unable to do so in the past owing mainly to water competition, which does not affect the rate on scrap iron to the same extent.

In *Scrap Iron Rates between Duluth, Minn., and Chicago, Ill.*, 28 I. C. C., 467, recently decided, the Commission permitted an increase on scrap iron between St. Paul and Chicago from 8 to 10 cents per 100 pounds. It is our opinion, considering the relative length of the two hauls and the just relation of the terminal charge to the line haul, that a rate of 3 cents per 100 pounds would certainly be as low between Chicago and Milwaukee as would 10 cents for a distance of 400 miles from St. Paul to Chicago. Upon a consideration of all the facts, we are of the opinion that the respondent has not fully justified the increase proposed, but that the present rate is too low. We are of the opinion that a rate not exceeding 3 cents per 100 pounds between these cities would be a just and reasonable maximum rate for the future. Rates on scrap iron seem generally to be stated in cents per 100 pounds, and no reason is suggested why this rate might not properly be so published. If, however, the respondent elects to establish an equivalent rate in cents per gross ton, it may do so.

An order will be issued in accordance with the above views.

28 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 181.

RATES ON COAL TO MILWAUKEE AND OTHER  
WISCONSIN POINTS.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF SCHEDULES PROVIDING FOR THE CANCELLATION OF JOINT RATES FOR THE TRANSPORTATION OF COAL FROM MINES IN KENTUCKY AND WEST VIRGINIA TO MILWAUKEE, MANITOWOC, AND KEWAUNEE, WIS., VIA PERE MARQUETTE RAILROAD AND CAR FERRY.

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*Submitted October 2, 1913. Decided December 8, 1913.*

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The holding of the original opinion, 27 I. C. C., 223, as to the maintenance of routes and rates for the transportation of soft coal from certain West Virginia and Kentucky mines to points on the west shore of Lake Michigan, when destined to points beyond, is affirmed. An advance of 10 cents per ton in the proportional rates here in question is likewise permitted.

*G. W. Kretzinger, jr.*, for Detroit, Grand Haven & Milwaukee Railway Company and Detroit & Toledo Shore Line Railroad.

*W. S. Bronson and J. S. Patterson* for Chesapeake & Ohio Railway Company.

*Gill & Barry* for Elmore-Benjamin Coal Company and others.

*W. N. King* for Kanawha & Michigan Railway Company, Kanawha & West Virginia Railroad Company, and Coal & Coke Railway.

SUPPLEMENTAL REPORT OF THE COMMISSION.

**MEYER, Commissioner:**

The original decision in this proceeding, promulgated on June 5, 1913, 27 I. C. C., 223, related to the closing of routes and the withdrawal of rates for the transportation of soft coal from mines in West Virginia and Kentucky on or tributary to the Chesapeake & Ohio and the Kanawha & Michigan to Milwaukee, Manitowoc, or Kewaunee, Wis., for further shipment beyond those points. The delivering line involved in the original proceeding was the Pere Marquette Railroad and car ferry.

The same originating lines have had through routes to Milwaukee via the Grand Trunk Railroad and car-ferry lines with joint proportional rates on coal intended for shipment beyond.

While the original case was pending, the Chesapeake & Ohio published tariff provisions canceling its joint rates and closing its route via the Grand Trunk. These provisions were suspended by order of the Commission and the case set for further hearing. The Kanawha & Michigan, though not formally a party to the supplementary proceedings, was represented at the hearing, and in accordance with an understanding there reached this company subsequently withdrew its rates and closed its route via the Grand Trunk. The tariff provisions issued to this end were likewise suspended by the Commission, and the whole question of rates and routes from the points of origin mentioned with Grand Trunk delivery at Milwaukee is now presented for decision.

The entire record of the original case was stipulated into the present case. The Grand Trunk presented some additional testimony with reference to the amounts of the divisions of the rates offered and demanded by the respective carriers, and also with reference to the cost of operating its ferry service from Grand Haven across Lake Michigan to Milwaukee. It does not appear, however, that the conditions surrounding the transportation of coal from the mines in question to Milwaukee via the Grand Trunk have been shown to be materially different from those obtaining via the Pere Marquette. Our finding is, therefore, the same as in the original case, namely, that the present routes must be maintained and the proportional rates may be increased not to exceed 10 cents per ton.

The order of suspension will be vacated upon the filing of tariffs in accordance with these findings. If such tariffs are not filed by December 23, 1913, an appropriate order will be entered.

23 I. C. C.

No. 5565.

SCOTT-MAYER COMMISSION COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.

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*Submitted August 2, 1913. Decided December 4, 1913.*

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Complainant alleges that defendants' separately established rate of 19 cents per 100 pounds for the transportation of apples in carloads from Memphis, Tenn., to Little Rock, Ark., applicable to through shipments from the Cumberland Valley region of Pennsylvania, is unreasonable and unjustly discriminatory because defendants maintain a proportional rate of 13 cents from Memphis to Little Rock on apples forwarded as through shipments to Little Rock from points in western New York. No evidence was presented tending to show that the 19-cent rate is unreasonable in and of itself; *Held*, That under these circumstances the Commission will not disturb the factor under consideration except upon a showing that such factor, or the through rate of which it is a part, is unreasonable or otherwise in violation of the act. Complaint dismissed.

*Morris H. and Louis M. Cohn* for complainant.

*Martin L. Clardy, Henry G. Herbel, and Fred G. Wright* for St. Louis, Iron Mountain & Southern Railway Company.

*W. F. Dickinson, Wallace T. Hughes, and J. E. Johanson* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale produce business at Little Rock, Ark. By petition, filed February 24, 1913, it alleges that it was charged by defendants an unreasonable and unduly prejudicial rate for the transportation from Memphis, Tenn., to Little Rock of certain carloads of apples shipped from points in Pennsylvania and Virginia. Reparation and the establishment of a reasonable and nondiscriminatory rate for the future are sought.

Between October 27, 1911, and December 5, 1912, defendants transported for complainant from Memphis to Little Rock 87 carloads of apples which had been forwarded as through shipments to Little Rock from Chambersburg, Mount Alto, and Quincy, Pa., and Winchester, Va., on the Cumberland Valley Railroad. Freight charges thereon were paid by complainant at destination on basis of a



through combination rate of 54 cents per 100 pounds, made up of a rate of 35 cents to Memphis and defendants' local rate of 19 cents from Memphis to Little Rock.

The carriers which participated in the transportation east of Memphis are not parties to this case, the only defendants being the Chicago, Rock Island & Pacific Railway Company and the St. Louis, Iron Mountain & Southern Railway Company. Complainant does not put in issue the reasonableness of the through rate of 54 cents, but attacks only the factor of 19 cents applicable to the haul beyond Memphis. Complainant offered no evidence to establish that the 19-cent rate is unreasonable in and of itself, but rested its case upon a showing that contemporaneously defendants maintain a proportional rate of 13 cents from Memphis to Little Rock, applicable to apples in carloads forwarded as through shipments from certain points in western New York and northwestern Pennsylvania.

Complainant contends that the maintenance of a rate, for the transportation from Memphis to Little Rock of apples originating on the Cumberland Valley Railroad, 6 cents in excess of the rate contemporaneously maintained for similar transportation of apples originating in western New York, is unduly prejudicial to the former traffic, and it seeks reparation upon the shipments in question upon basis of said proportional rate of 13 cents.

Hereinafter the territory to which the 13-cent proportional rate is applicable will be referred to as the New York region, and the territory from which the shipments in question moved as the Cumberland Valley region. Complainant purchases apples from both regions. The apples received from the New York region and the Cumberland Valley region are all packed in barrels, and are of substantially the same kinds, grades, and values. Complainant sells the apples at points in Arkansas on basis of the cost at points of origin, plus freight charges and such profit as it may be able to make. Its testimony is to the effect that because of the difference in freight rates, here in issue, it must accept lower profits on the Cumberland Valley apples than on those from the New York region. Defendants' transportation service from Memphis to Little Rock is substantially the same whether the apples originate in the New York region or in the Cumberland Valley.

The testimony submitted by defendants may be summarized as follows: There is a very considerable movement of apples from New York state to points on defendants' lines. There are no joint through rates on apples from New York state to Little Rock and other points in Arkansas, the through rates being the combination of intermediate rates to and from the Mississippi River crossings. The rates from the New York region are 25 cents to St. Louis, Mo., 25 cents to Cairo, Ill., and 35 cents to Memphis. Apples in carloads are rated

fifth class in the western classification, and throughout a considerable portion of the territory west of the Mississippi they move at the fifth-class rates. The fifth-class rates to Little Rock are 37 cents from St. Louis, 32 cents from Cairo, and 27 cents from Memphis. The class-C rates to Little Rock are 27 cents from St. Louis, 23 cents from Cairo, and 18 cents from Memphis. The carriers operating from these Mississippi River crossings, however, have seen fit to establish commodity rates on apples to points in Arkansas, which are in most instances the same as the class-C rates, being 27 cents and 23 cents from St. Louis and Cairo, respectively, to Little Rock, and 1 cent in excess of the class-C rate, or 19 cents from Memphis to Little Rock. Consequently, if defendants applied the full combination to and from the Mississippi River crossings the combinations from the New York region to Little Rock would be: Via St. Louis, 52 cents, made up of 25 cents to the Mississippi River and 27 cents beyond; via Cairo, 48 cents, made up of 25 cents to the Mississippi and 23 cents beyond; and via Memphis, 54 cents, made up of 35 cents to the Mississippi and 19 cents beyond. If these combinations were applied it is obvious that the traffic to the destination territory in question would all move via Cairo, inasmuch as the combination on Cairo is 4 cents less than the combination on St. Louis and 6 cents less than the combination on Memphis. Consequently the carriers west of the river have equalized the combination via the three gateways by publishing proportional rates of 23 cents from St. Louis and 13 cents from Memphis to Little Rock, which, added to the rates east of the crossings just mentioned, results in through rates of 48 cents via those crossings, equal to the combination on Cairo.

The situation as to the movement of apples from the Cumberland Valley region is such that the carriers west of the Mississippi have not considered it necessary to publish proportional rates. The rates from the Cumberland Valley region are 35 cents to Memphis, 33 cents to Cairo, and 32 cents to St. Louis. The rates beyond those crossings are 19 cents, 23 cents, and 27 cents, respectively, making the combination from the Cumberland Valley to Little Rock via Memphis 54 cents, via Cairo 56 cents, and via St. Louis 59 cents. Inasmuch as the lowest combination to Little Rock is through Memphis, it has been unnecessary for the carriers operating from Memphis to publish a proportional rate in order to make the rate via Memphis as low as the rate via other crossings.

Defendants contend that the situation disclosed by the record amounts simply to this: That the through rate from the New York region to Little Rock is 48 cents and the through rate from the Cumberland Valley region to Little Rock is 54 cents; that the rates applied west of the river are in effect nothing more than divisions of the through rates; that such separately established rates ought not

to be disturbed unless it is shown that they are unreasonable in and of themselves; that if such showing is not made, it would be unjust to change a particular factor of the through rate except upon proof that the entire through rate is unreasonable or discriminatory; and that in view of the fact that the through rate is not in issue in this proceeding, complainant has established no ground for relief.

In *Serry v. S. P. Co.*, 18 I. C. C., 554, the Commission expressed the opinion that it is not *per se* unlawful to make a proportional rate lower than the local rate and limit the application of that proportional to traffic coming from a specified territory. In *Bascom Co. v. A., T. & S. F. Ry. Co.*, 17 I. C. C., 354, a similar view was expressed. The decision in *Rosenbaum Bros. v. L. & N. R. R. Co.*, 22 I. C. C., 62, was not contrary to the expressions in the other case just cited. In that case the question whether a carrier may maintain proportional or separately established rates for the same haul, varying with different points of origin or of destination, was not involved. In the *Interior Iowa Cities case*, 28 I. C. C., 64, 73, we said:

A shipper has no legal grievance with respect to his through traffic unless compelled to pay excessive charges for the through service. If the through charges are lawful in the sense that they are reasonable charges for the through service, a shipper can not predicate unlawfulness of one of the component parts of the through charges by alleging that it is excessive compensation to that carrier for that part of the through service. He pays for the completed service, and it is no concern of his how the through charges are divided among the carriers, whether by agreement or by published proportionals, so long as the through charges for the through carriage are reasonable. The futility of a finding that a proportional rate is excessive, in the absence of a finding also that the through charges are excessive, is clear, for by so much as we may reduce the proportional rate of one carrier another carrier in the route may increase its proportional rate, thus leaving the through charges unaffected by our order. It does not follow, however, that a carrier's separate rates applicable to through transportation are beyond control and regulation by the Commission. On the contrary, it not infrequently happens, as in this case, that the through charges for the through service are unreasonable because one of the proportionals entering into the through charges is excessive; and in such a case and upon a proper record our authority to reduce the unreasonable through charges by reducing the excessive proportional rate is beyond question.

In the present case complainant specifically refrains from attacking the through rate. It has offered no evidence tending to show that the 19-cent factor is unreasonable for the service performed, other than a reference to the 13-cent proportional rate applicable to traffic originating in the New York region. Complainant's real grievance, if any it has, is with the through rate from the Cumberland Valley region. Under these circumstances we are of opinion that it would be unjust to disturb a particular factor of the through rate paid by complainant, except upon a record which would warrant a conclusion as to the reasonableness of the entire through rate or of the particular factor thereof under consideration. It follows that the complaint must be dismissed, and it will be so ordered.

No. 4604.

TRAFFIC BUREAU OF NASHVILLE, TENN.,

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

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*Submitted January 15, 1913. Decided December 9, 1913.*

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1. Conditions affecting the transportation of coal from Louisville & Nashville Railroad western Kentucky mines to Louisville, Ky., Memphis and Nashville, Tenn., not found to be so dissimilar as to preclude a comparison of the rates from the same fields to the three cities.
2. Rate of \$1 per ton on coal to Nashville from Louisville & Nashville western Kentucky mines found to be unreasonable and rate of 80 cents prescribed. A like rate from Nashville, Chattanooga & St. Louis Railway mines in Tennessee and Alabama found to be unreasonable and rate of 90 cents prescribed.
3. Complaint as to unreasonableness of \$1 rate to Nashville on coal from Illinois Central western Kentucky mines not sustained.
4. The value of ton, car, and train mileage statistics in fixing rates discussed.
5. The Louisville & Nashville and the Nashville, Chattanooga & St. Louis inter-switch all traffic, including coal, at Nashville. They refuse to switch coal to and from the Tennessee Central, which road retaliates by refusing to switch coal to or from the rails of either of the other two. Upon complaint; *Held*, That the practice of all three roads is unreasonable, and further, that of the Louisville & Nashville and Nashville, Chattanooga & St. Louis is unjustly discriminatory. Discrimination required to be removed and reasonable practice prescribed.
6. "Terminals are either open or they are not" and a carrier may not exercise an arbitrary discretion, based upon a strained construction of the proviso of section 3, in saying for what roads and for what traffic it will open its terminals and for what other roads and traffic it will decline so to do.

*Perkins Baxter* and *K. T. McConnico* for complainant and interveners.

*William A. Northcutt* for Louisville & Nashville Railroad Company.

*R. Walton Moore* for Nashville, Chattanooga & St. Louis Railway and Illinois Central Railroad Company.

*C. C. Waller* for Nashville, Chattanooga & St. Louis Railway.

*Fordyce, Holliday & White* for Tennessee Central Railroad Company.

REPORT OF THE COMMISSION.

*McCHORD, Commissioner:*

Nashville, Tenn., through its traffic bureau as complainant, its board of trade, its industrial bureau, its mayor and city council, and

the county of Davidson, as interveners, attacks the rate of \$1 per ton on coal to Nashville from western Kentucky mines on the Louisville & Nashville Railroad and the Illinois Central Railroad, and from mines in eastern Tennessee and in Alabama on the Nashville, Chattanooga & St. Louis Railway. The movement from the Tennessee mines is through Alabama and therefore interstate. The complaint is quite voluminous and the rate is challenged as being unreasonable inherently and relatively, and as unduly prejudicing Nashville and its shippers to the advantage of such other cities as Chattanooga, Knoxville, and Memphis, Tenn.; Louisville and Covington, Ky.; Cincinnati, Ohio; and East St. Louis, Ill. The allegation of unjust discrimination is directed against the Louisville & Nashville and the Nashville, Chattanooga & St. Louis in so far as Chattanooga is said to be preferred, and against the Louisville & Nashville alone with respect to the other cities. The question of interline switching at Nashville is also placed in issue and will be treated separately herein.

Owensboro, Ky., is about 30 miles east of Henderson, Ky., both being on the Ohio River and between Louisville and St. Louis. South of Henderson the Louisville & Nashville main line from St. Louis is known as the Henderson division and extends to a station within a few miles of Nashville, at which station it connects with the main line running south from Louisville. The Owensboro division runs southeast to a few miles beyond Russellville, Ky. Leaving the main line at Memphis Junction, Ky., between Louisville and Nashville, the Memphis division runs due southwest to Memphis, intersecting the Owensboro division at Russellville and the Henderson division at Guthrie. Coal from the Henderson division moves through Guthrie direct to Nashville; from the Owensboro division it moves to Russellville, thence 19 miles over the Memphis division to Guthrie, whence to Nashville the route is the same as from Henderson. It is well here to note that coal moves from both these divisions to Memphis, the route up to Guthrie being identical with Nashville shipments, and the distance beyond being 216 miles over the Memphis division to Memphis or 49 miles over the Henderson division to Nashville.

From the Henderson division mines the average distance to Nashville is 110.62 miles; from the Owensboro division, 106.4; an average of 108.5 miles from the Louisville & Nashville western Kentucky mines. From the Illinois Central mines in the same fields the average distance to Nashville is 167 miles, the coal reaching Nashville over the Tennessee Central Railroad. From the Nashville, Chattanooga & St. Louis mines in eastern Tennessee and in Alabama the average distance to Nashville is 140 miles.

In support of their contentions complainants offered innumerable exhibits comparing on ton, car, and train mile bases the Nashville rate with the rates on coal obtaining north of the Ohio River; with rates to St. Louis, East St. Louis, Louisville, Cincinnati, Memphis, and other points on the Ohio and Mississippi rivers from mines in Kentucky, Tennessee, and Virginia; with rates on coal prescribed by this Commission in a number of cases; with rates on coal to Chattanooga and to certain destinations in the southeast; with rates on coal from other mines to Nashville; with rates on other commodities to Nashville and to other destinations; with the average per-ton and per-car-mile rate received by defendants and other carriers on all traffic. In all of these instances the Nashville rate yields the greatest earnings. In elaborate detail defendants sought to analyze and rebut these comparisons in an endeavor to show that none was of any value in determining the reasonableness of the rate in issue.

To attempt to set forth the detail into which complainants and defendants went in support of their contentions as to the conclusions that properly might be drawn from these exhibits would require a more lengthy discussion than the facts in this case make necessary. Ton-mile statistics, reflecting as they do neither car loading, train tonnage, nor car or train mileage, are far from being infallible guides in fixing freight rates. A high average ton-mile revenue may be due to short hauls, a preponderance of which occasions the railroad traffic manager much uneasiness, while it has been repeatedly shown that traffic low in ton-mile earnings may, because of its farther carriage and greater density, be the most remunerative. Per-car earnings, with distance considered, are much more reliable. Where the commodity moves in trainloads the earnings per train-mile furnish the best criterion, not only the car loading but also such physical conditions as grades, etc., being here reflected. Comparisons of any kind, however, to be effective must be analogous, or nearly so; that is, the rate charged or gross earnings derived on any basis for the transportation of a given commodity between two points furnishes a guide in arriving at the rate to be charged upon the same or nearly the same commodity between two other points similarly circumstanced. Comparisons made with coal moving to the lakes for transshipment, to tidewater and between points in central freight association territory are of little value here because of the manifest difference in transportation conditions, particularly with respect to density of traffic, train tonnage, and return empty hauls.

Chattanooga, Knoxville, and East St. Louis have coal mines in their immediate vicinities, and such juxtaposition of supply and market must needs exercise a material influence over the rates from farther distant mines thereby lessening the strength of the comparison.

On steam coal the \$1 per ton rate to Nashville, from Louisville & Nashville western Kentucky mines, has been in effect since 1888. Domestic coal took a rate varying from 10 to 50 cents per ton higher. In 1896 the \$1 rate was made applicable to all except screened coal, which was given a rate of \$1.15, and this was the adjustment that obtained until December 1, 1898, when the rate on all grades of coal was fixed at \$1. For 25 years, therefore, the rate on steam coal has remained unchanged. In 1888 coal cars on the Louisville & Nashville could transport but 16 tons to the car, while the equipment of to-day hauls not less than 41 tons from these mines to Nashville. The tractive power of engines has also increased, and instead of 660 gross tons handled between Guthrie and Nashville in 1888, 1,165 gross tons are now handled. True the hauling of coal in trainloads into Nashville appears to be the exception rather than the rule, but the increased tractive power of locomotives nevertheless is significant as tending to reduce the operating cost per unit of freight transported. But the volume of tonnage has also increased, the 193,000 tons handled in 1892 growing to nearly 450,000 tons in 1911. While there is mention of increased cost of labor and material, little more than a suggestion appears of record and no attempt was made to show operating costs. Viewed alone, the Nashville rate, unchanged throughout its 25-year existence and producing a ton-mile revenue of 9.2 mills for an average haul of 108.5 miles, at least commands attention.

From these identical western Kentucky fields coal is hauled over the same rails up to Guthrie en route to Memphis. As stated, the movement is thence 216 miles over the Memphis division, a total average distance of 276 miles for a rate of \$1.10, a per-ton-mile revenue of slightly less than 4 mills. In other words, the Louisville & Nashville charges only 10 cents per ton more when the additional haul beyond Guthrie is 276 miles to Memphis than when it is 49 miles to Nashville. Any difference in transportation conditions, therefore, must be found beyond Guthrie. The capacity of engines is shown to be 1,165 gross tons from Guthrie to Nashville, 900 gross tons from Guthrie to Paris, Tenn., and 1,100 gross tons from Paris to Memphis. While it may be that the movement of coal to Memphis is somewhat heavier than to Nashville, there is nothing of record that indicates any substantial dissimilarity of operating conditions from these mines to either market. Defendants do not undertake to show any material difference in transportation conditions, but rely entirely upon their contention that the Memphis rate was dictated by water transportation down the Mississippi River from the Pittsburgh, Pa., mines, and it will therefore be necessary to examine the conditions at Memphis which are said to limit the rate to that point.

The present rate of \$1.10 to Memphis became effective April 1, 1911, and is an advance of 10 cents over the rate which obtained during the preceding nine years. It was the subject of complaint to this Commission, and in *Memphis Freight Bureau v. L. & N. R. R. Co.*, 26 I. C. C., 402, decided December 3, 1912, was found to be reasonable. In that case the history of the Memphis rate is completely reviewed, but will be briefly repeated here because of the earnestness with which defendants stressed the river influence. When the Louisville & Nashville entered Memphis with coal from western Kentucky, about 1882, it found the market supplied exclusively by Pittsburgh with coal which was barged down the river. Through the medium of its own coal-selling agency and with rates varying from \$1.40 to \$1.70 per ton it endeavored to meet the Pittsburgh competition until January 1, 1889, when the rate became fixed at \$1.40. This figure seems to have been amply low to insure Kentucky coal a market. In the meantime the Illinois Central entered Memphis from the same fields, but without any effect upon the rail rates. Then came the Kansas City, Memphis & Birmingham Railroad (now the Frisco) with a shorter haul from its Alabama mines, and railroad competition began, resulting in a rate of \$1.30 from Alabama and Kentucky in the latter part of 1889. Fluctuations between \$1.18 and \$1.40 occurred until 1897, when a rate of \$1.10 was established, this being increased to \$1.25 in 1899. The Kansas City, Memphis & Birmingham, desirous of securing the advantage of its shorter haul and in an endeavor also to offset the greater cost of mining in the Alabama fields, insisted upon maintaining a 10-cent differential under the Kentucky rate, and this insistence precipitated a rate war, which bore the rate down to 45 cents, after which, on October 26, 1901, a truce was declared and a rate of \$1.25 from all mines agreed upon. On August 7, 1902, this rate was reduced to \$1 and so remained until the advance to the present \$1.10 rate on April 1, 1911. That these facts do not support the theory that water competition fixes the present Memphis rate is at once apparent and was so found in the *Memphis Coal case, supra*, where, at page 404, we said:

This rate history clearly shows active competition between both rail and water carriers at Memphis, though the effect of the latter is now largely only potential and could not be considered as influencing either the \$1 or \$1.10 rate, especially in view of the fact that rates of \$1.40 and \$1.60 were in effect for more than the first six years that the Louisville & Nashville encountered Mississippi River competition. It would seem, therefore, that the controlling competition is between the carriers themselves, particularly the Kansas City, Memphis & Birmingham (now the Frisco), which line appears to be largely responsible for all of the reductions made since its entry into Memphis. \* \* \*

It is unnecessary to comment upon the river competition further than to say it has no effect upon these rates.



So far, then, as water-borne Pittsburgh coal is concerned, it may be said to have reached the maximum of its influence when the \$1.40 rate was established. That there is railroad competition at Memphis is manifest, but that this does not affect the Louisville & Nashville tonnage appears from the following:

The Louisville & Nashville, with 67.3 per cent of the total rail-coal tonnage to Memphis for the year 1910-11, experiences little discomfiture by reason of the 4.85 per cent handled by the Frisco, and is not seriously disturbed on account of the 24.93 per cent transported by the Illinois Central. *Memphis coal case, supra*, page 406.

But there is, or should be, equally as keen railroad competition at Nashville, and, on the whole, we are unable to find any substantial dissimilarity attaching to the transportation of coal from western Kentucky mines on the Louisville & Nashville to Memphis and to Nashville. This of course excepts distance, which is greatly in favor of Nashville.

At Louisville much the same condition exists and the 60-cent rate charged until June 1, 1913, by the Louisville & Nashville for its average haul of 142 miles in connection with the Louisville, Henderson & St. Louis Railroad, and by the Illinois Central for 125 miles, is offered for comparison by complainants, and the comparison opposed by defendants on the ground of water competition to Louisville from Pittsburgh and West Virginia mines. The Louisville coal rates from western Kentucky have undergone a gradual reduction from \$1.50 in 1888 to \$1 in 1908, 70 and 75 cents in January, 1910, and finally 60 cents on February 28, 1910. On June 1, 1913, subsequent to the submission of this case, the rate was advanced to 65 cents. Before the route was established between the Louisville & Nashville and the Louisville, Henderson & St. Louis, which appears to have been about 1910, the Louisville & Nashville hauled its coal via Guthrie, a distance of 179.4 miles from its Owensboro mines and 225.6 miles from its Henderson division. There was considerable difference of opinion as to the cost of barging coal to Louisville from Pittsburgh. The Louisville & Nashville's principal witness expressed the opinion that such transportation might be had for 12.5 or 15 cents per ton, but these figures are unsubstantiated by proof and can not be regarded as controverting our finding in *Slider v. S. Ry. Co.*, 24 I. C. C. 312, 313, where we said:

All the coal involved in this case comes down the Ohio River in barges from Pennsylvania and West Virginia fields. Louisville is 134 miles below Cincinnati, and it costs complainant about 50 cents per ton more to get his coal from the mines than it costs Cincinnati dealers.

If the barge rate is 50 cents per ton more to Louisville than to Cincinnati, irrespective of what might be the rate to Cincinnati it

can hardly be said that either the 60 or 65 cent rail rate is water-compelled. In fact, this is partially admitted by the leading witness for the Louisville and Nashville, who testified:

A 60-cent rate from western Kentucky mines to Louisville is not made to meet the water competition into Louisville particularly or to meet the competition from eastern Tennessee and eastern Kentucky. It was made because the Illinois Central makes a rate of 60 cents a ton from western Kentucky to Louisville. Our coal is in precisely the same vicinity as theirs; in some cases mines are served by both railroads, and manifestly we could not get a higher rate on coal from western Kentucky mines into Louisville than is made by our immediate competitors.

Again, then, we find that rail-carrier competition is the factor of prime consideration. The Louisville & Nashville with a 17-mile longer haul must meet the Illinois Central rate, while the latter relies almost entirely upon the river competition in differentiating conditions at Louisville and at Nashville. There are mines on the Louisville, Henderson & St. Louis, the nearest to Louisville being 86 miles and the farthest 136 miles, from which the rate is 50 cents, but the effect of this source of supply and the lower rate is not shown. The conditions, then, at Louisville are quite similar to those at Memphis, and at neither can they be said substantially to differ from those at Nashville. While we do not think a relationship in the matter of coal rates between these three cities should be established, we do think that a comparison of their rates properly may be drawn, giving some consideration to the fact that coal is now actually moving in considerable quantities by water to Louisville, but not permitting it to vitiate the effect of the comparison. Measured, then, by the rates to Memphis and to Louisville the rate to Nashville is high.

Accepting the statements of defendants that the average loading of coal cars from the mines in question is 41 tons on the Louisville & Nashville and 34.5 tons on the Nashville, Chattanooga & St. Louis, we find the \$1 rate producing a car revenue of \$41 in one instance and \$34.50 in the other, or per-car-mile earnings of 37.78 cents and 24.64 cents, respectively. Assuming that all of this equipment is returned empty, the car-mile revenue for the loaded and empty movement is 18.89 cents and 12.32 cents, while the average loaded and empty car-mile revenue for all traffic during 1912 was 10.54 cents for the Louisville & Nashville and 10.8 cents for the Nashville, Chattanooga & St. Louis. The loading from the Illinois Central mines is not shown, but at 40 tons per car, producing a revenue of \$40 per car, the earnings per loaded car-mile for the 167-mile average haul would be 24 cents, or 12 cents per car-mile for the loaded and empty movement; 34.5 tons to the car would produce a loaded car-mile rate of 20.65 cents, or 10.325 cents per car-mile loaded and

28 I. C. C.

empty. The average car-mile earnings loaded and empty for all traffic during 1912 were 7.777 cents on the Illinois Central and 16.425 cents on the Tennessee Central.

As to the Louisville & Nashville, we are of opinion and find that the existing rate on coal to Nashville from western Kentucky mines on its Owensboro and its Henderson divisions is unreasonable. We are of the same opinion and similarly find as to the Nashville, Chattanooga & St. Louis rate from its Tennessee and Alabama mines to Nashville. We further find that reasonable rates to Nashville from the Louisville & Nashville western Kentucky mines on its Owensboro and its Henderson divisions should not exceed 80 cents per ton, and from the Nashville, Chattanooga & St. Louis mines in Alabama and in Tennessee, the movement from which is through Alabama, 90 cents per ton.

The Illinois Central does not reach Nashville. Its rails from western Kentucky extend only about halfway and the traffic is turned over to the Tennessee Central at Hopkinsville, Ky. This route is 58.5 miles longer than the Louisville & Nashville from the same field and 27 miles in excess of the Nashville, Chattanooga & St. Louis haul from east Tennessee and Alabama; besides, it embraces two separate and distinct carriers. Furthermore, little attack was made on this rate, complainants confining themselves almost entirely to the Louisville & Nashville and the Nashville, Chattanooga & St. Louis rates. Under all the circumstances we can not find, upon this record, that the Illinois Central-Tennessee Central rate is unreasonable.

Reparation is asked but under the circumstances of this case we do not think an award should be made.

#### THE NASHVILLE SWITCHING SITUATION.

The Louisville & Nashville Terminal Company is a corporation chartered in 1903, and its entire capital stock of \$100,000 is owned by the Louisville & Nashville. Of the \$2,535,000 funded debt, bonds to the amount of \$2,500,000 are outstanding in the hands of the public, the remainder being held in the treasury of the Louisville & Nashville. These bonds are guaranteed by the Louisville & Nashville and the Nashville, Chattanooga & St. Louis. The terminal company owns certain terminal stations, 1.07 miles of main line, and 30.32 miles of sidings. In 1896 all of its property was leased for 999 years jointly to the Louisville & Nashville and the Nashville, Chattanooga & St. Louis at a rental of 4 per cent per annum upon the cost, the amount to be paid by each company being determined on basis of use. The operating expenses are prorated upon the same basis. Both the Louisville & Nashville and the Nashville, Chattanooga & St. Louis have individually owned tracks which they operate independently each of the other or of the terminal company, and upon

these tracks industries are located. To and from these industries as well as to and from those on the rails of the terminal company traffic of all kinds is freely interswitched by the Louisville & Nashville and the Nashville, Chattanooga & St. Louis.

Prior to 1907 neither of these roads would switch freight of any kind to or from the Tennessee Central, but in that year, "in deference to public opinion," they began switching all noncompetitive traffic, *except coal*, to and from the Tennessee Central. The charge for this service is \$3 per car. Although both roads are emphatic in asserting that they have never even considered the switching of coal from the Tennessee Central, the Nashville, Chattanooga & St. Louis did have effective rates applicable to and from its interchange with the Tennessee Central under which such a movement could have been accomplished for 60 cents per ton. Some surprise was expressed when this fact was developed at the hearing, and shortly thereafter this rate was canceled. Complainants aver that this situation unjustly discriminates against coal from the Tennessee Central, that the practice with respect to switching coal at Nashville is unreasonable, and that the charge therefor (effective until shortly after the hearing) is unreasonable. While the switching tariff of the Tennessee Central is similar to those of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, that road's refusal to switch coal from either of the other lines is in reality a retaliatory measure. It has styled itself a "cross-complainant" and favors this portion of petitioners' prayer. The other defendants insist that to require them to perform this switching would be to compel them to give the use of their terminal facilities to another carrier engaged in like business, in contravention of the proviso of section 3; that their terminals are not now open to any except noncompetitive traffic; and that while coal may come from noncompetitive points, the very nature of the commodity renders it competitive. As to the competitive character of the commodity there is little doubt; but why this attribute of coal is restricted to that from the Tennessee Central and finds no place with the coal from the Nashville, Chattanooga & St. Louis Tennessee and Alabama fields when it meets the Louisville & Nashville Kentucky coal, or vice versa, is neither clear nor defensible. It may be that these two roads regard themselves as a single entity, due to the ownership by the Louisville & Nashville of more than 70 per cent of the capital stock of the Nashville, Chattanooga & St. Louis; this would explain but not justify. As we said in *Merchants & Mfrs Asso. of Baltimore v. P. R. R. Co.*, 23 I. C. C., 474, 476, "Terminals are either open or they are not," and a carrier may not exercise an arbitrary discretion, based upon a strained construction of the proviso of section 3, in saying for what roads and what traffic it will open its terminals and for what other roads

28 I. C. C.

and traffic it will decline so to do. In this case the joint and the separately owned terminals of each of these two defendants are open to all of the traffic of the other; are open to all noncompetitive traffic to and from the Tennessee Central except coal, and, up to shortly after the hearing, those of the Nashville, Chattanooga & St. Louis were open as to this coal but at a prohibitive rate.

Our conclusion is that the practice of defendants with respect to switching coal at Nashville is unreasonable and unjustly discriminatory; that the present tariffs of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis unjustly discriminate against shipments of coal from the Tennessee Central and unduly prefer shipments of coal from the lines each of the other. We find that a just and reasonable practice with respect to switching at Nashville to be observed by all defendants will permit the switching of coal from the interchange of each carrier to industries on the rails of the other. Defendants will be required to cease the unjust discrimination herein found to exist and to establish and apply for the future the practice herein found to be reasonable. This disposition of the case is in consonance with the principle enunciated by the Supreme Court in *U. S. v. Terminal R. R. Asso. of St. Louis*, 224 U. S., 383.

The tariffs of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis provide that no charge will be made for switching between their respective lines at Nashville, the expense of this service presumably being absorbed by the line bringing in the traffic. This fact was not developed at the hearing, and no prayer is made for, nor is there any testimony touching upon, the absorption of switching at Nashville. Under their restricted practice no coal has been interswitched between the Louisville & Nashville and the Nashville, Chattanooga & St. Louis on the one hand and the Tennessee Central on the other. A compliance with our order herein will remove this restriction. We can not anticipate unjust discrimination with respect to absorption of switching charges and no finding with respect thereto will be made on this record.

An order in accordance with these findings will be issued.

No. 5226.

MEMPHIS FREIGHT BUREAU

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

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*Submitted April 12, 1913. Decided December 3, 1913.*

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Rate of 38 cents per 100 pounds for the transportation of imported burlap from north Atlantic ports to Memphis, Tenn., not found to be unduly prejudicial. Complaint dismissed.

*Marsilliot & Chandler and J. S. Davant* for complainant.

*George Butler, R. Walton Moore, and Nelson W. Proctor* for Louisville & Nashville Railroad Company; Illinois Central Railroad Company; Southern Railway Company; and Norfolk & Western Railway Company.

*Frederic Lyman Ballard and Henry Wolf Bicklé* for Trunk Lines.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This petition is filed by the Memphis Freight Bureau, a voluntary association of merchants, manufacturers, and shippers at Memphis, Tenn., on behalf of the American Bag Company, hereinafter referred to as complainant, a corporation engaged in the manufacture of bags from cotton cloth and burlap at Memphis. It alleges that defendants' rates for the transportation of imported burlap from the ports of New York, N. Y., Boston, Mass., Philadelphia, Pa., Norfolk and Newport News, Va., to Memphis are unreasonable, and unduly prejudicial to Memphis, as compared with the rates on like traffic from said ports to St. Louis, Mo., and East St. Louis and Cairo, Ill. The establishment of reasonable and nondiscriminatory rates for the future and an award of reparation are sought.

At the hearing the allegation of discrimination in favor of East St. Louis and Cairo was withdrawn. An examination of the tariffs shows that there are no import rates on burlap from Norfolk or Newport News to St. Louis. While no evidence was offered as to the import rates on this traffic from Philadelphia and Baltimore to St. Louis, it appears that rates from these ports are certain differentials under the New York rates.

Practically all the burlap used in this country is imported from Calcutta, India, through the north Atlantic ports, of which Boston

and New York are representative, or through the Gulf ports, of which New Orleans is representative.

Boston and New York are the ports through which the greater portion of the burlap is imported, and there are direct steamship lines from Calcutta to these ports. Steamship lines handling this traffic from Calcutta to New Orleans transship the burlap at Liverpool or London. The average time consumed in the transportation of burlap from Calcutta to Boston and New York is about 60 days, and to New Orleans 90 days. Boston and New York, in addition to being the principal ports of entry for burlap, are also the largest "spot" burlap markets; that is, points where brokers have on hand burlap for immediate delivery in the United States. It is said that New Orleans is also a "spot" market, but only to a limited extent, and that generally no "spots" can be obtained at this port.

About 25 per cent of complainant's output is burlap bags, which are sold in the Mississippi Valley, Arkansas, Oklahoma, Texas, Kansas, Kentucky, Missouri, Illinois, and Indiana. Complainant's principal competitors are at St. Louis. The rate on burlap bagging from New Orleans to St. Louis, a distance of 699 miles, is 16 cents and to Memphis, a distance of 394 miles, 12 cents.

From north Atlantic ports to St. Louis defendants maintain import rates on this traffic, the rate from New York being 22 cents and from Boston 20 cents. The distance from New York to St. Louis is 1,054 miles, and to Memphis 1,158 miles. No import rates on this traffic are published from these ports to Memphis, the rate from New York and Boston to Memphis being in each instance a commodity rate of 38 cents. It is complainant's contention that the rates from north Atlantic ports to Memphis are unduly prejudicial to Memphis and preferential to St. Louis as compared with the existing import rates to St. Louis.

The ocean rates on burlap from Calcutta to Boston and New York are said to be approximately 6 cents per 100 pounds less than to New Orleans. This difference in the ocean rates as between north Atlantic and gulf ports, in effect, equalizes the total through rates from Calcutta to St. Louis via either New York or New Orleans, and makes the rate via Boston 2 cents less than through either New York or New Orleans. The St. Louis manufacturers may, therefore, import through either the Atlantic or gulf ports as circumstances may favor either route, at the same total rate through New York and at a less rate through Boston. The 38-cent rate on burlap from Boston and New York to Memphis makes the cost of transportation via these ports so much greater than via New Orleans that complainant is confined to the latter port in the importation of its burlap.

Complainant states that the 30 days additional time consumed in transporting burlap from Calcutta to Memphis enables the St. Louis manufacturers to put their product on the market that much earlier than complainant, and, furthermore, that this additional time represents a loss of \$300 in interest on the purchase price of a million yards of burlap from Calcutta which involves an investment of \$60,000 and is said not to be an unusual shipment.

Complainant states that frequently it has quotations from brokers on "burlap to arrive" at New York or Boston on or about a certain date. These quotations may be the same or less than on "burlap to arrive" at New Orleans. If they are the same or a little less than at New Orleans it is neither practicable nor economical for complainant to accept them on account of the great difference in the freight rates via New York and Boston to Memphis as compared with that via New Orleans. On the other hand, the St. Louis manufacturers, having substantially the same rates from Calcutta via Boston and New York as via New Orleans, may accept the quotations from either market. Again, it is stated that on an abnormally high market, such as has lately prevailed, complainant has deemed it the better policy to purchase "spot" burlap, basing its quotations on the "spot" market prices; that at times the prices of "spots" in New York or Boston are much lower than at New Orleans; and that frequently burlap is not obtainable at New Orleans, while at practically all times it can be had at New York or Boston. It is urged that the 38-cent rate from New York and Boston to Memphis prevents complainant from taking advantage of these conditions. On the other hand it is argued that the St. Louis manufacturer may purchase "spots" at either Atlantic port or New Orleans upon an equal basis of total transportation cost.

While it is said that the prices of "spot" burlap at New York and Boston are at times lower than at New Orleans, this does not appear to be the general rule. Complainant's witnesses testified that the prices of "spots" were governed by the supply and demand, and that at times the prices at New Orleans were lower than at Atlantic ports. It is obvious that when they are the same at the various ports the difference in the freight rates between New York and New Orleans to St. Louis would give New Orleans an advantage of 6 cents per 100 pounds in the total cost of burlap over New York on shipments to St. Louis.

Burlap bagging is rated fourth class in official classification, but the domestic rates on this traffic from New York and Boston to St. Louis and Memphis are equal to the fifth-class rates to these points, namely, 35 and 38 cents, respectively. Complainant urges that the differences between the import rates from north Atlantic ports to



St. Louis and Memphis should not exceed this difference in the fifth-class rates, and that therefore the rates from New York and Boston to Memphis should not exceed 25 cents and 23 cents, respectively. The latter rates, it is said, would also produce approximately the same ton-mile earnings as the present rates from New York to St. Louis, or about 4 mills per ton-mile.

On behalf of the trunk lines operating between north Atlantic ports and St. Louis, it is stated that the import rates to St. Louis are made with reference to the rate from New Orleans to St. Louis; that years of experience has shown that no substantial amount of import traffic in burlap can be attracted to the north Atlantic ports if the rates from these ports to destinations exceed the rates from New Orleans by more than 6 cents, the differential between the ocean rates to north Atlantic ports and to New Orleans; and that the import rate of 22 cents from New York to St. Louis has been established on this basis, being 6 cents above the 16-cent rate from New Orleans to St. Louis. They say that if it is sought to extend the application of import rates on this basis down the Mississippi Valley, it is obvious that as the distance from New York increases and the distance from New Orleans decreases, a limit will be reached beyond which it will not be profitable to attempt to attract traffic through the north Atlantic ports. It is contended that in order to obtain a substantial share of the traffic from the eastern seaboard to southern territory the rates from New York would have to be made on the basis of a 6-cent differential over the rate from New Orleans, and that in the case of Memphis this would result in an abnormally low rate of 18 cents for a haul of 1,158 miles. For this reason it is said the trunk lines have considered it futile to meet Gulf competition at points south of the Ohio River, and that no import rates are published from north Atlantic ports to such points.

Briefly stated, the defense of the southern carriers is that they do not fix or control the rates from the eastern seaboard to St. Louis and, therefore, can not be held responsible for those rates; and that the competitive conditions existing on this traffic at St. Louis, as well as the lower cost of operation and greater density of traffic in eastern and central freight association territory, justify lower rates to St. Louis than to Memphis. They urge that the present all-rail rates from the eastern seaboard to Memphis were established many years ago to meet competition of all-water routes and are to-day controlled by the potential competition of those routes and kept depressed below the general plane of rates to southern territory. They state that the rates from the east to Memphis have never borne any definite or intentional relationship to the rates to St. Louis; and that merely because there happens to be a differential of 3 cents be-

tween the respective fifth-class rates to these points is no reason for holding that a greater difference than 3 cents between the special commodity rates on burlap to St. Louis and Memphis is unlawful.

The Louisville & Nashville Railroad contends that it does not participate in this import traffic to St. Louis. The record shows that while that road concurred in the import rates from New York, Philadelphia, and Baltimore to St. Louis, at the time this complaint was filed, there were no agreed divisions via its line. Since that time the Louisville & Nashville has withdrawn from the tariffs naming import rates on this traffic from the latter ports to St. Louis. It, however, still concurs in the import rate on burlap from Boston to St. Louis.

Defendants argue that the establishment of rates from the Atlantic seaboard to Memphis such as the rate demanded by the complainant herein would be useless, because such rates could not and would not control for the eastern-port routes any appreciable share of the Memphis traffic; that the only traffic which defendants could expect under the proposed rates would be that of "spot" burlap, and then only if there was no "spot" burlap to be had at New Orleans, or if the price at New York was sufficiently low to equalize the difference in the rates between New Orleans and New York to Memphis.

Obviously the geographical location of Memphis is not such as to warrant a differential in favor of St. Louis of 16 cents in the rates on imported burlap from New York. Upon this record, however, it is not clear that the existing discrimination against Memphis is in violation of section 3 of the act, or is of a character which may be removed by an order from this Commission. There are at least two railroad systems—the Pennsylvania and New York Central—which can haul this traffic the entire distance from New York to St. Louis over their own rails. Other roads, over which a two or three line haul is necessary, have seen fit to participate in a rate which is the same as that over systems having a one-line haul. None of the carriers operating directly from New York to St. Louis reaches Memphis. If the carriers which reach Memphis, and are parties to the 22-cent rate to St. Louis, were required to withdraw from participation in the 22-cent rate to St. Louis so long as they maintain a rate in excess of 25 cents to Memphis, it would simply mean that the other lines reaching St. Louis would obtain more of the traffic to that point with less competition. It can not be said, therefore, that the maintenance of the 22-cent rate to St. Louis is the voluntary act of the defendants which reach Memphis. If we were authorized to fix a minimum rate, or to treat the carriers collectively, as a single unit or system, the adjustment complained of is one which might call for correction.

The Commission has held in cases where joint or proportional rates were made by all of the carriers leading to certain points of destination that it was proper to end a discrimination as between points of origin by a reduction in the rate from a certain point that was subject to discrimination. *Indiana Steel & Wire Co. v. C., R. I. & P. Ry. Co.*, 16 I. C. C., 155; *Railroad Commission of Tennessee v. A. A. R. R. Co.*, 17 I. C. C., 418. But, as explained in *Ashland Fire Brick Co. v. S. Ry. Co.*, 22 I. C. C., 115, this principle has application only where the traffic from both groups of origin is necessarily transported to destinations by the same connecting carrier or carriers, and where it is possible for the delivering carriers to put an end to the discrimination by the exercise of their power to refuse to enter into preferential joint or proportional rates. In the present case it is clear that the refusal of the carriers reaching Memphis to participate in the 22-cent rate to St. Louis would not affect the maintenance of that rate by other carriers which do not reach Memphis.

Under the existing law, and in view of the dissimilarity of circumstances and conditions surrounding the transportation to St. Louis and to Memphis, we find that the rate adjustment does not result in undue prejudice against Memphis within the meaning of section 3 of the act. There is no evidence tending to prove that the rate to Memphis is unreasonable. The complaint must, therefore, be dismissed, and it will be so ordered.

2S I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 232.  
GRAIN RATES IN CENTRAL FREIGHT ASSOCIATION  
TERRITORY.

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*Submitted November 14, 1913. Decided December 8, 1913.*

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1. Proposed increase in reshipping rates on malt from Milwaukee and Chicago to points in central freight association territory and to western terminal of trunk lines has been justified. Order of suspension vacated.
2. Proposed increase in rates on certain by-products of grain from Mississippi River crossings has not been justified. Present rates should be continued in effect.
3. Proposed increase in proportional rates from upper Mississippi River crossings as compared with those from the lower crossings has not been justified. Present rates should be continued for the future.
4. Proposed general increase in grain rates from Illinois points to markets of consumption has been justified, but lawfulness of individual rates not passed on.

*W. W. Collin, jr.*, for New York Central lines, Pennsylvania lines, and Baltimore & Ohio Railroad Company.

*N. S. Brown* for Wabash Railroad Company and its receivers.

*Edward Barton, N. S. Brown, C. B. Cardy, W. W. Collin, jr., W. F. Dickinson, O. W. Dynes, R. V. Fletcher, H. B. Herbel, W. T. Hughes, A. P. Humburg, O. S. Lewis, R. B. Scott, R. M. Shaw, C. C. Wright*, and *F. G. Wright* for Baltimore & Ohio Southwestern Railroad Company, Chicago & Alton Railroad Company, and others.

*G. T. Bell* for Traffic Bureau, Sioux City Commercial Club.

*W. O. Bartholomew* for Southern Illinois Millers' Association.

*W. R. Bach* for Illinois Grain Dealers' Association, Farmers' Grain Dealers' Association of Illinois, and others.

*Charles Rippin* for Merchants' Exchange of St. Louis.

*J. H. Henderson* and *D. N. Lewis* for Clinton Sugar Refining Company, Douglas & Company, and others.

*G. M. Freer, L. A. Valiers, R. L. Callahan, Alfred Brandeis, G. H. Evans, C. B. Stafford, A. E. Rust, A. D. Beals, J. A. Smith, H. S. Antrim, B. H. O'Meara, T. E. Gillette, jr., T. M. Henderson, M. D. Smiley*, and *Herbert Sheridan*, for certain protestants.

*F. H. Behring* for Southern Railway Company.

REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

This proceeding involves the suspension of a great number of tariffs, but those tariffs have only been examined by the Commission

as to those rates against which protest was filed with the Commission and as to which the protestants appeared and made objection upon the hearing. Such points are four in number:

1. Reshipping rates on malt from Milwaukee and Chicago to points in central freight association territory and to western termini of trunk lines.

2. Rates on certain by-products of grain which are made higher than rates upon grain products.

3. Proportional rates from the upper Mississippi River crossings as compared with those from the lower crossings.

4. Rates on grain and grain products to various markets from points of production in Illinois.

#### 1. RATES ON MALT.

The rates here involved are what are known as reshipping or specific rates from Chicago to various points in central freight association territory and to the termini of western trunk lines. The exact question presented will be best understood by considering rates to a particular point, and Pittsburgh may be selected for that purpose.

There is a joint through rate on malt from Minneapolis to Pittsburgh of 18 cents. There is also at the present time a rate on malt and barley from Minneapolis to Chicago of  $7\frac{1}{2}$  cents and a reshipping rate from Chicago to Pittsburgh of 9.2 cents, producing a combination from Minneapolis to Pittsburgh of 16.7 cents. The maltster at Chicago can therefore bring his barley from Minneapolis to Chicago, malt it at Chicago, and send on the product at a total rate of 13 cents less than is paid by the maltster at Minneapolis upon his malt. The carriers allege that it was for the purpose of correcting this discrimination in favor of maltsters located at Chicago and Milwaukee and putting Minneapolis upon an equality with these points that the proposed increase has been made.

Just how the existing condition came about does not clearly appear. The rate upon barley, rye, and other coarse grains from Minneapolis to Chicago has long been  $7\frac{1}{2}$  cents. Formerly the rate upon malt was 10 cents, but this was subsequently reduced to  $7\frac{1}{2}$  cents, the same as the rate upon barley. Whether the low reshipping rate was put in while the 10-cent malt rate was in effect for the purpose of protecting the Minneapolis maltster, or whether it was established after the reduction of the rate on malt to continue to the Milwaukee and Chicago maltster some part of the advantage which they had formerly possessed, does not clearly appear, nor is it, probably, material to this case.

The reshipping rate on grain from Chicago to Pittsburgh is 10 cents, which produces a rate of  $17\frac{1}{2}$  cents on barley from Minneapolis.

Reshipping rates on grain products from Chicago to points east are usually somewhat higher than the corresponding rate upon grain, and it appears that the reshipping rate on grain products from Chicago to Pittsburgh is  $10\frac{1}{2}$  cents. Ordinarily the rate on malt is the same as that upon grain products, and this is sometimes the same as the grain rate and sometimes slightly higher. It never happens, except under very abnormal conditions, that the rate on malt is lower than that on the grain out of which the malt is manufactured. The presumption is, therefore, that in the present case the advance from 9.2 to  $10\frac{1}{2}$  cents, the ordinary grain-product rate, is proper.

Two classes of objections are urged against this advance. Malt-interests at Chicago say that the increase ought not to be made, because malt at the present time competes with certain other articles usually manufactured from corn, and that to increase the rate on malt without a corresponding increase in the rate on these articles is to put the Chicago maltster at a disadvantage.

It did not very clearly appear what the exact character of these substitutes for malt were, nor where they were manufactured, nor at exactly what rate they move. So far as the testimony shows anything, they take the ordinary grain-product rate. Being manufactured from corn, the raw material would be obtained, not in the northwest, but in the corn-producing areas farther south. If, as the respondents assert in their brief, these articles take the ordinary grain-products rate, it is difficult to see how any undue discrimination can be affirmed of the conditions which will exist if these malt rates are advanced. The malt substitute will take the grain-product rate and the malt will also take that rate. If the malt has taken a lower rate in the past, and if the Chicago maltster has obtained an advantage to which he was not entitled, that circumstance affords no reason why his advantage should be continued.

Reshipping rates from Chicago to points in central freight association territory differ with the point of origin of the grain; that is, the reshipping rate upon barley grown in Iowa may be different from the reshipping rate upon that grown in the northwest. It may therefore be possible to find instances where the malt will move at a lower rate than the substitute, but in every instance the rate upon malt is as low as that upon grain products manufactured from grain from the same territory.

The objections put forward in behalf of the Milwaukee maltsters proceed upon an entirely different ground. They concede that if the Milwaukee maltster and the Minneapolis maltster both purchase their barley in Minneapolis the advanced rates will do exact justice between the parties, but they urge that the Milwaukee maltster does not in fact obtain his barley from Minneapolis but buys it in intermediate territory between Minneapolis and Milwaukee, from

which the rate to Milwaukee is higher, frequently much higher, than 7½ cents. They urge that since the Milwaukee manufacturer must pay a higher rate upon his raw material in, he should have a lower rate upon his product out.

It is well understood that grain rates to Chicago and Milwaukee from much of the intermediate territory between Minneapolis upon the one hand and Milwaukee and Chicago upon the other, are higher than the so-called proportional rate upon which the business moves from Minneapolis. It is alleged that this is due to the effect of various kinds of competition at Minneapolis and St. Paul, mainly that of the great lakes. Whether this relation of rates is or is not correct is not now considered. It has in the past been before this body in various connections, and has been to some extent approved. For present purposes it is enough to say that if this relation is wrong it can not be corrected by requiring carriers leading south from Chicago to establish a lower rate upon malt, when manufactured at Chicago or Milwaukee, than they establish on malt coming from Minneapolis. If these rates from intermediate territory are too high the remedy is to obtain a reduction in those tariffs. As a rule lines leading south of Chicago are not interested in the rates from the grain fields to Milwaukee and Chicago and ought not to be required to make good any unreasonableness in those rates.

As we understand it, these increased tariffs apply to malt the same reshipping rate which is applied to other grain products. No satisfactory reason has been suggested why a lower rate should be continued. We are of the opinion, and find, that these increases to the above extent have been justified.

## 2. RATES ON BY-PRODUCTS.

In the past the general rule in most parts of this country has been to apply the same rate to the grain and the product manufactured from that grain, but of late a disposition has been manifested to make the rate upon the product somewhat higher than that upon the grain. At the present time the reshipping rate from Chicago to New York, for example, is 16 cents upon grain and 16.7 upon the product. To-day carriers in central freight association territory have gone one step farther and have created a class of articles known as by-products. These articles are produced in the manufacture of grain, but are said to be less directly related to the grain itself than are ordinary grain products. The rate upon these by-products from the Mississippi River to points in central freight association territory and trunk line termini have been increased 1 cent per 100 pounds, while the rate upon grain products remains the same.

The objection to this increase will be best appreciated by stating two specific instances which were brought out upon the hearing.

The Clinton Sugar Refining Company manufactures gluten feed at Clinton, Iowa. This feed is produced from corn in the process of its manufacture into various other articles. There are in effect through rates on corn from various points of production west of Clinton, through Clinton, to the east bank of the Mississippi River, and the Sugar Refining Company buys corn at such interior points, ships it into Clinton, manufactures it and ships out the gluten feed to the east bank of the Mississippi River under transit upon the through rate. In the past reshipping rates have been in effect from the east bank of the Mississippi River under which this gluten feed moved to destination at the same charge as did grain products. This rate has now been increased 1 cent per 100 pounds, while the grain products continue to move at the former rate.

Gluten feed possesses about the same nutritive value and sells for about the same price, for stock-feeding purposes, as do many articles which are classified by the respondents as grain products and which continue to move under the grain-products rate. The value of gluten feed and of these grain products is substantially the same, and the cost of transportation the same. The result of this present increase is to compel the manufacturer of gluten feed to pay 1 cent per 100 pounds more than does his competitor who manufactures grain products.

The second instance developed upon the hearing relates to the manufacture of mixed feed at St. Louis. This product, like gluten feed, comes into competition with grain products for stock-feeding purposes. It has the same value and can be transported at the same cost as grain products, but the rate applicable to it is now made 1 cent higher than that paid by the manufacturer of grain products.

The respondents justify this increase by stating that the present rate on these by-products is no higher than the present local rate from St. Louis and other Mississippi River crossings upon grain products, that the increase has really come about by withdrawing from the by-product the benefit of the reshipping rate and confining it to the local tariff. This they say has been done for the reason that by-products can not be milled in transit under rules applicable in central freight association territory.

It may be noted in passing that this last statement is not borne out by the record. The testimony strongly indicates that mixed feed like that dealt in by the shipper at St. Louis can be manufactured under transit at Chicago and Peoria; but, however this may be, the reason put forth by the respondents in justification of this increase is not a satisfactory one. These so-called by-products which were brought to our attention are manufactured from grain. They have the same value as many grain products, and they come into direct competition



It appears that class rates are the same from all these crossings to points east of the Indiana-Illinois state line, and that the same is true of most commodities. In the reverse direction rates generally are the same from Indiana and Ohio to St. Louis and the upper crossings. It has already been noted that for a long time the same proportional rates upon grain have been maintained. When a long-standing relation like this is changed carriers should put before the Commission clearly and convincingly the reason for the change. Nothing in the present record can be said to justify the increase from the upper crossings under consideration, and we are of the opinion, and find, that this increase has not been justified and that the present rates are reasonable and should be continued for the future.

#### 4. THE GENERAL INCREASE.

The tariffs under suspension work a general increase in grain rates from Illinois points to markets of consumption of from  $\frac{1}{2}$  cent to  $1\frac{1}{2}$  cents, an average of approximately 1 cent per 100 pounds. The substantial question presented in this proceeding is upon the propriety of these increases. In order that the issue may be clearly appreciated, the methods by which these rates are constructed and the influences which have controlled them in the past must be understood.

Rates between the Atlantic seaboard and central freight association territory are generally stated in groups at a percentage of the Chicago-New York rate. Grain rates between all points east of the Indiana-Illinois state line, with the exception of a few stations in Indiana, have been in the past and are still stated by this method. The base rate from Chicago to New York is to-day  $20\frac{1}{2}$  cents upon grain, and the rate from the various percentage groups east of the Indiana-Illinois line corresponds with this.

Although Illinois is divided into territorial groups, to which percentage rates are applied in case of most commodities, grain rates have not for some time been and are not to-day so stated. The reason for this is as follows:

Several lines of railroad run east and west through the state of Illinois and thence east to the Atlantic seaboard. These are the short lines from the territory traversed, and are called east and west lines. Several other lines of railroad extend north and south through the state of Illinois, converging upon Chicago, which are known as north and south lines. The north and south lines cross the east and west lines at numerous junction points.

If grain at one of these junction points moves to the eastern market by the direct line, the north and south line obtains no part in the transportation. If grain at some point upon the north and south line were to move to the same market by the shortest line, the north

and south line would ordinarily transport it a short distance to a junction point with some east and west line which would carry it from there to destination. In neither case would the north and south line obtain any considerable haul.

At Chicago are found certain east and west lines which do not tap the state of Illinois to any considerable extent by their own rails and which therefore will not participate in the handling of this grain unless it is brought to Chicago by the north and south line. Chicago itself is the greatest grain market in the United States, and its merchants desire to handle this grain.

Owing to these various competitive conditions it long ago came to pass that grain rates to eastern destinations from points in Illinois were the same through Chicago as by the direct line, even though the distance was materially greater. At Chicago certain transit privileges were allowed so that the grain could be merchandised at that point and sent on at the balance of the through rate.

As time went on abuses in the use of this transit privilege grew up which were alleged to give merchants at Chicago an undue advantage over their competitors at other points. This led to protest and investigation. Many of these practices were condemned by this Commission and finally, for the purpose of avoiding the necessity of the use of transit and the evils to which it gave rise, carriers leading out from Chicago established what are known as reshipping rates. The first of these rates was established in 1907, and was, on grain from Chicago to New York, 15 cents.

Thereupon the north and south lines established from points in Illinois to Chicago what were styled "proportional rates," applying when the business went beyond Chicago under the reshipping rate, and these rates were sufficient to make the combined proportional rate from Chicago and the reshipping rate from Chicago equal to the rate by the direct line. If, for example, the rate by the direct line to a point 200 miles south of Chicago was 21 cents, the proportional rate applied a proportional rate from that point of origin.

It will be seen, therefore, that these Illinois grain rates were stated in two parts, the reshipping rate from Chicago east, and the proportional rate from the point of origin to Chicago. The sum of the two equals the rate by the direct line, and an increase in either factor operates to increase the through rate.

While the bulk of the grain produced in Illinois which is not consumed near the point of production is shipped to the east finally, large quantities of it move to the southeast, the south, and to some extent the southwest. Rates to these other markets are usually made by adding a rate to the Ohio River or to St. Louis which, in combination with the rate beyond, makes up the through transportation

charge to destination. There are in addition, however, certain through rates which are named to points where the through charge is not the same as the combination upon the Ohio River or St. Louis.

The increases in question are effected by an increase in the proportional rates to Chicago of from  $1\frac{1}{2}$  to  $\frac{1}{2}$  cent per 100 pounds, together with corresponding increases to St. Louis and the Ohio River and to other points to which through rates are maintained. These tariffs, taken as a whole, effect an increase from these Illinois points to all markets of consumption of about 1 cent per 100 pounds upon the average.

It seems to be conceded that these increases apply alike in all directions, and that no relation in rates has been disturbed. If the increase in one direction is approved, it should be approved in all directions. It seems, further, to be generally conceded that the rate under which the bulk of the traffic moves is that to the east, and that the crucial question is whether these increased rates to the Atlantic seaboard are reasonable.

It should be observed in passing that grain interests at St. Louis insist that the proposed rates will discriminate against that locality in favor of Chicago in that the proportional rates to Chicago are lower in proportion to distance than to St. Louis. It is not contended that the relation now in effect is in any way changed by the proposed advances, but it is insisted that this relation has all along been wrong and to the disadvantage of St. Louis, and that the Commission in this case ought to correct that discrimination.

Where an increase in rates may operate to create or to increase a discrimination it is always necessary to inquire in passing upon the propriety of the increase whether the discrimination be undue, but in instances like the present, where the relation has not been changed and where the discrimination, if one previously existed, has not been intensified, that question does not properly arise upon the justification of the increase. The party claiming to rest under such discrimination should file his complaint in due form, thereby bringing to the attention of interested carriers and other parties the exact matter for consideration. We do not therefore at this time consider or pass upon this claim of St. Louis, but proceed to inquire merely whether carriers have justified this increase from Illinois points to the Atlantic seaboard, and here the rate to New York may be taken as typical.

As already noted, these increases are effected by increasing the proportional rates to Chicago, and carriers seek to justify the increase, first, by showing that these proportional rates, even as increased, are still unduly low. But this is no justification, for we have already seen that these rates are not established as just and reasonable rates but rather under the compulsion of competitive conditions.

The grain shipper of Illinois is entitled to a reasonable rate by the direct line. If the line via Chicago can not obtain reasonable compensation when operating over the circuitous route it can retire from the business.

In passing through Chicago the grain has the benefit of that market, and this is a distinct advantage to the grain producer. Within certain limits this fact may perhaps properly be taken into account in determining the reasonableness of these rates, but, generally speaking, the shipper is entitled to a reasonable charge by the direct line of transportation and, while we must consider the just interest of all carriers who legitimately engage in this transportation, we can not properly allow an unreasonable rate by the direct line for the purpose of permitting the circuitous line to engage in the business at a reasonable profit.

The carriers claim, in the second place, that they require additional revenue. A statement was filed combining the financial operations of 10 of these carriers which showed that in the last five years these companies had added \$100,000,000 new capital to their properties; that since 1908 their gross revenues had increased by \$46,000,000, but that nevertheless their operating revenue, after the payment of taxes was almost exactly the same for the year 1913 as for the year 1908. This statement as well as the figures introduced by individual carriers may well challenge attention, but it does not demonstrate the cause of this increase. Many of these companies only transport the grain a comparatively short distance, while the rate under consideration is that from Illinois to the Atlantic seaboard. It would be under the method of this increase these Illinois carriers will obtain the entire benefit of the increase in rates, and should it be shown that under other considerations that this increase is a proper one the general showing of these carriers goes far toward convincing that the increase should be allowed. But if need for additional revenue is to be made the substantive justification for this increase, all carriers, or at least all the principal carriers which handle this traffic, should be parties, and this means that this question should be tried in that proceeding in which eastern carriers as a whole are now demanding an increase in rates. It would be both premature and improper to express here any opinion upon that general subject.

The respondents also show that these rates from Illinois to the Atlantic seaboard yield a very low rate per ton-mile as compared with the general level of rates and with certain other commodities. But the very figures which show this fact also show that rates from Indiana upon the east, and from territory beyond the Mississippi River upon the west, are about equally low, and this suggests the real question for discussion here. An increase of the reshipping rate from Chicago increases all rates beyond Chicago, not only these

from Illinois, but those from trans-Mississippi territory and from the northwest. Upon the other hand, these increases of the proportional rates increase the rate from Illinois alone without affecting that from either side. If rates from all this territory were properly adjusted before this increase, then Illinois rates become too high as compared with other territory; if they were too low before and the advance increases them to a proper relative point, then the increase is permissible. We should inquire, therefore, how these rates from Illinois compare with those from other parts of central freight association territory. If they are sufficiently high already, this increase should be denied and these carriers should be remitted for relief to the general rate increase case now pending. If, upon the other hand, they are now too low, then this increase should be allowed, and if any general increase is permitted it should be applied from Illinois in common with other localities. The question which we can properly consider at this time is simply one of relation.

It has already been noted that rates upon most commodities between Illinois points and the Atlantic seaboard are stated in groups and in percentages of the Chicago rate. It is also understood that these rates are based, broadly speaking, upon distance. No reason has been suggested why reasonable grain rates would not result if the same method of constructing these rates were to be followed. It is probably true that the competition for this grain is more keen than for most other kinds of traffic. It is also true that slight differences in the rate are not felt by the producer of grain to the same extent that they are by many other industries. From this it may perhaps follow that the groupings by which grain rates are stated need not exactly follow those which apply to other commodities, but we think that upon the whole a fair test of the reasonableness of these Illinois rates, as compared with other rates in central freight association territory, is to inquire whether they are greater or less than would result from the application of these same percentage groups, using the Chicago-New York rate as the base.

The present system of stating grain rates from Illinois was first employed in 1907. At that time the rate from Chicago to New York was 17½ cents, while that from 110 per cent territory in Illinois was 21 cents. Since then the rate from central freight association territory east of the Indiana-Illinois state line has been twice increased, once by increasing the Chicago-New York rate from 17½ to 19½ cents, and again by a second increase of 1 cent. This rate is now 20½ cents, 3 cents higher than in 1907.

The proportional rates up to Chicago have never been increased. The reshipping rate from Chicago has been twice increased, first from 15 to 15½ cents and last from 15½ to 16 cents, and this has resulted in an increase of these Illinois rates by 1 cent. The prevailing rate from

which the rate to Milwaukee is higher, frequently much higher, than  $7\frac{1}{2}$  cents. They urge that since the Milwaukee manufacturer must pay a higher rate upon his raw material in, he should have a lower rate upon his product out.

It is well understood that grain rates to Chicago and Milwaukee from much of the intermediate territory between Minneapolis upon the one hand and Milwaukee and Chicago upon the other, are higher than the so-called proportional rate upon which the business moves from Minneapolis. It is alleged that this is due to the effect of various kinds of competition at Minneapolis and St. Paul, mainly that of the great lakes. Whether this relation of rates is or is not correct is not now considered. It has in the past been before this body in various connections, and has been to some extent approved. For present purposes it is enough to say that if this relation is wrong it can not be corrected by requiring carriers leading south from Chicago to establish a lower rate upon malt, when manufactured at Chicago or Milwaukee, than they establish on malt coming from Minneapolis. If these rates from intermediate territory are too high the remedy is to obtain a reduction in those tariffs. As a rule lines leading south of Chicago are not interested in the rates from the grain fields to Milwaukee and Chicago and ought not to be required to make good any unreasonableness in those rates.

As we understand it, these increased tariffs apply to malt the same reshipping rate which is applied to other grain products. No satisfactory reason has been suggested why a lower rate should be continued. We are of the opinion, and find, that these increases to the above extent have been justified.

## 2. RATES ON BY-PRODUCTS.

In the past the general rule in most parts of this country has been to apply the same rate to the grain and the product manufactured from that grain, but of late a disposition has been manifested to make the rate upon the product somewhat higher than that upon the grain. At the present time the reshipping rate from Chicago to New York, for example, is 16 cents upon grain and 16.7 upon the product. To-day carriers in central freight association territory have gone one step farther and have created a class of articles known as by-products. These articles are produced in the manufacture of grain, but are said to be less directly related to the grain itself than are ordinary grain products. The rate upon these by-products from the Mississippi River to points in central freight association territory and trunk line termini have been increased 1 cent per 100 pounds, while the rate upon grain products remains the same.

The objection to this increase will be best appreciated by stating two specific instances which were brought out upon the hearing.

The Clinton Sugar Refining Company manufactures gluten feed at Clinton, Iowa. This feed is produced from corn in the process of its manufacture into various other articles. There are in effect through rates on corn from various points of production west of Clinton, through Clinton, to the east bank of the Mississippi River, and the Sugar Refining Company buys corn at such interior points, ships it into Clinton, manufactures it and ships out the gluten feed to the east bank of the Mississippi River under transit upon the through rate. In the past reshipping rates have been in effect from the east bank of the Mississippi River under which this gluten feed moved to destination at the same charge as did grain products. This rate has now been increased 1 cent per 100 pounds, while the grain products continue to move at the former rate.

Gluten feed possesses about the same nutritive value and sells for about the same price, for stock-feeding purposes, as do many articles which are classified by the respondents as grain products and which continue to move under the grain-products rate. The value of gluten feed and of these grain products is substantially the same, and the cost of transportation the same. The result of this present increase is to compel the manufacturer of gluten feed to pay 1 cent per 100 pounds more than does his competitor who manufactures grain products.

The second instance developed upon the hearing relates to the manufacture of mixed feed at St. Louis. This product, like gluten feed, comes into competition with grain products for stock-feeding purposes. It has the same value and can be transported at the same cost as grain products, but the rate applicable to it is now made 1 cent higher than that paid by the manufacturer of grain products.

The respondents justify this increase by stating that the present rate on these by-products is no higher than the present local rate from St. Louis and other Mississippi River crossings upon grain products, that the increase has really come about by withdrawing from the by-product the benefit of the reshipping rate and confining it to the local tariff. This they say has been done for the reason that by-products can not be milled in transit under rules applicable in central freight association territory.

It may be noted in passing that this last statement is not borne out by the record. The testimony strongly indicates that mixed feed like that dealt in by the shipper at St. Louis can be manufactured under transit at Chicago and Peoria; but, however this may be, the reason put forth by the respondents in justification of this increase is not a satisfactory one. These so-called by-products which were brought to our attention are manufactured from grain. They have the same value as many grain products, and they come into direct competition

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with these grain products in the feeding of stock. Their value is no greater than that of grain products; in many instances it is less. The cost of transportation and all the incidents of transportation are substantially the same. In the past they have gone under the same rate and it is no answer now, when this rate is increased against the manufacturer of the by-product, to say that his article should take the local rate while the products of grain are entitled to a reshipping rate. This increase is a substantial thing which the shipper must pay and which can not be justified by any mere change in the nomenclature of its statement. It may be that these by-products ought to take a higher rate than grain products; it may be that they can not properly be given the privileges of transit while grain products are; but before this discrimination, which must practically drive out of business these manufacturers if applied at all points and in all directions, is pronounced a due and proper one something more must be presented to us than the mere statement by these respondents that they have seen fit to make this classification. We are of the opinion and find that the increase in rates upon by-products from the Mississippi River crossings has not been justified and that the present rates should be continued in effect.

### 3. RATES FROM UPPER AND LOWER MISSISSIPPI RIVER CROSSINGS.

In the past the same proportional rates to points in central freight association territory have obtained from both lower and upper Mississippi River crossings. It is alleged that the tariffs under suspension withdraw former rates from the upper crossings while leaving them in effect from the lower crossings, and that this results in applying higher rates under other tariffs from the upper than from the lower crossings.

Only one witness in behalf of the carriers was interrogated upon this point upon the hearing. He was not apparently clear as to whether the increase from the upper crossings had in fact been made, but did state that the rate from those crossings might properly be higher than from St. Louis for the reason that the rate to St. Louis from Iowa points was greater than to the upper crossings.

This proposed justification overlooks the whole situation. Grain produced in Iowa naturally moves to central freight association points through the upper crossings; that grown in Missouri through lower crossings. From territory west of the Missouri River the rates are usually so adjusted that the movement may be by the crossings indifferently. In the past equal rates have been maintained from these crossings to central freight association points in order that all gateways might be open to the free movement of grain and grain products from all territory west of the river. The effect of these new tariffs is to give the lower crossings the advantage.

It appears that class rates are the same from all these crossings to points east of the Indiana-Illinois state line, and that the same is true of most commodities. In the reverse direction rates generally are the same from Indiana and Ohio to St. Louis and the upper crossings. It has already been noted that for a long time the same proportional rates upon grain have been maintained. When a long-standing relation like this is changed carriers should put before the Commission clearly and convincingly the reason for the change. Nothing in the present record can be said to justify the increase from the upper crossings under consideration, and we are of the opinion, and find, that this increase has not been justified and that the present rates are reasonable and should be continued for the future.

#### 4. THE GENERAL INCREASE.

The tariffs under suspension work a general increase in grain rates from Illinois points to markets of consumption of from  $\frac{1}{2}$  cent to  $1\frac{1}{2}$  cents, an average of approximately 1 cent per 100 pounds. The substantial question presented in this proceeding is upon the propriety of these increases. In order that the issue may be clearly appreciated, the methods by which these rates are constructed and the influences which have controlled them in the past must be understood.

Rates between the Atlantic seaboard and central freight association territory are generally stated in groups at a percentage of the Chicago-New York rate. Grain rates between all points east of the Indiana-Illinois state line, with the exception of a few stations in Indiana, have been in the past and are still stated by this method. The base rate from Chicago to New York is to-day  $20\frac{1}{2}$  cents upon grain, and the rate from the various percentage groups east of the Indiana-Illinois line corresponds with this.

Although Illinois is divided into territorial groups, to which percentage rates are applied in case of most commodities, grain rates have not for some time been and are not to-day so stated. The reason for this is as follows:

Several lines of railroad run east and west through the state of Illinois and thence east to the Atlantic seaboard. These are the short lines from the territory traversed, and are called east and west lines. Several other lines of railroad extend north and south through the state of Illinois, converging upon Chicago, which are known as north and south lines. The north and south lines cross the east and west lines at numerous junction points.

If grain at one of these junction points moves to the eastern market by the direct line, the north and south line obtains no part in the transportation. If grain at some point upon the north and south line were to move to the same market by the shortest line, the north

and south line would ordinarily transport it a short distance to a junction point with some east and west line which would carry it from there to destination. In neither case would the north and south line obtain any considerable haul.

At Chicago are found certain east and west lines which do not tap the state of Illinois to any considerable extent by their own rails and which therefore will not participate in the handling of this grain unless it is brought to Chicago by the north and south line. Chicago itself is the greatest grain market in the United States, and its merchants desire to handle this grain.

Owing to these various competitive conditions it long ago came to pass that grain rates to eastern destinations from points in Illinois were the same through Chicago as by the direct line, even though the distance was materially greater. At Chicago certain transit privileges were allowed so that the grain could be merchandised at that point and sent on at the balance of the through rate.

As time went on abuses in the use of this transit privilege grew up which were alleged to give merchants at Chicago an undue advantage over their competitors at other points. This led to protest and investigation. Many of these practices were condemned by this Commission and finally, for the purpose of avoiding the necessity of the use of transit and the evils to which it gave rise, carriers leading east from Chicago established what are known as reshipping rates. The first of these rates was established in 1907, and was, on grain from Chicago to New York, 15 cents.

Thereupon the north and south lines established from points in Illinois to Chicago what were styled "proportional rates," applying when the business went beyond Chicago under the reshipping rate, and these rates were sufficient to make the combined proportional rate into Chicago and the reshipping rate from Chicago equal to the through rate by the direct line. If, for example, the rate by the direct line from some point 200 miles south of Chicago was 21 cents, the north and south line applied a proportional rate from that point of 6 cents.

It will be seen, therefore, that these Illinois grain rates were stated in two parts, one the reshipping rate from Chicago east, and the other the proportional rate from the point of origin to Chicago. The sum of the two equals the rate by the direct line, and an increase of either factor operates to increase the through rate.

While the bulk of the grain produced in Illinois which is not consumed near the point of production is shipped to the east finally, large quantities of it move to the southeast, the south, and to some extent the southwest. Rates to these other markets are usually made by naming a rate to the Ohio River or to St. Louis which, in combination with the rate beyond, makes up the through transportation

charge to destination. There are in addition, however, certain through rates which are named to points where the through charge is not the same as the combination upon the Ohio River or St. Louis.

The increases in question are effected by an increase in the proportional rates to Chicago of from  $1\frac{1}{2}$  to  $\frac{1}{2}$  cent per 100 pounds, together with corresponding increases to St. Louis and the Ohio River and to other points to which through rates are maintained. These tariffs, taken as a whole, effect an increase from these Illinois points to all markets of consumption of about 1 cent per 100 pounds upon the average.

It seems to be conceded that these increases apply alike in all directions, and that no relation in rates has been disturbed. If the increase in one direction is approved, it should be approved in all directions. It seems, further, to be generally conceded that the rate under which the bulk of the traffic moves is that to the east, and that the crucial question is whether these increased rates to the Atlantic seaboard are reasonable.

It should be observed in passing that grain interests at St. Louis insist that the proposed rates will discriminate against that locality in favor of Chicago in that the proportional rates to Chicago are lower in proportion to distance than to St. Louis. It is not contended that the relation now in effect is in any way changed by the proposed advances, but it is insisted that this relation has all along been wrong and to the disadvantage of St. Louis, and that the Commission in this case ought to correct that discrimination.

Where an increase in rates may operate to create or to increase a discrimination it is always necessary to inquire in passing upon the propriety of the increase whether the discrimination be undue, but in instances like the present, where the relation has not been changed and where the discrimination, if one previously existed, has not been intensified, that question does not properly arise upon the justification of the increase. The party claiming to rest under such discrimination should file his complaint in due form, thereby bringing to the attention of interested carriers and other parties the exact matter for consideration. We do not therefore at this time consider or pass upon this claim of St. Louis, but proceed to inquire merely whether carriers have justified this increase from Illinois points to the Atlantic seaboard, and here the rate to New York may be taken as typical.

As already noted, these increases are effected by increasing the proportional rates to Chicago, and carriers seek to justify the increase, first, by showing that these proportional rates, even as increased, are still unduly low. But this is no justification, for we have already seen that these rates are not established as just and reasonable rates but rather under the compulsion of competitive conditions.

The grain shipper of Illinois is entitled to a reasonable rate by the direct line. If the line via Chicago can not obtain reasonable compensation when operating over the circuitous route it can retire from the business.

In passing through Chicago the grain has the benefit of that market, and this is a distinct advantage to the grain producer. Within certain limits this fact may perhaps properly be taken into account in determining the reasonableness of these rates, but, generally speaking, the shipper is entitled to a reasonable charge by the direct line of transportation and, while we must consider the just interest of all carriers who legitimately engage in this transportation, we can not properly allow an unreasonable rate by the direct line for the purpose of permitting the circuitous line to engage in the business at a reasonable profit.

The carriers claim, in the second place, that they require additional revenue. A statement was filed combining the financial operations of 10 of these carriers which showed that in the last five years these companies had added \$100,000,000 new capital to their properties; that since 1908 their gross revenues had increased by \$46,000,000, but that nevertheless their operating revenue, after the payment of taxes, was almost exactly the same for the year 1913 as for the year 1908. This statement as well as the figures introduced by individual carriers may well challenge attention, but it does not demonstrate the justice of this increase. Many of these companies only transport this grain a comparatively short distance, while the rate under consideration is that from Illinois to the Atlantic seaboard. It seems that under the method of this increase these Illinois carriers will obtain the entire benefit of the increase in rates, and should it appear from other considerations that this increase is a proper one the financial showing of these carriers goes far toward convincing that the increase should be allowed. But if need for additional revenue is to be made the substantive justification for this increase, all carriers, or at least all the principal carriers which handle this traffic, should be parties, and this means that this question should be tried in that proceeding in which eastern carriers as a whole are now demanding an increase in rates. It would be both premature and improper to express here any opinion upon that general subject.

The respondents also show that these rates from Illinois to the Atlantic seaboard yield a very low rate per ton-mile as compared with the general level of rates and with certain other commodities. But the very figures which show this fact also show that rates from Indiana upon the east, and from territory beyond the Mississippi River upon the west, are about equally low, and this suggests the real question for discussion here. An increase of the reshipping rate from Chicago increases all rates beyond Chicago, not only these

from Illinois, but those from trans-Mississippi territory and from the northwest. Upon the other hand, these increases of the proportional rates increase the rate from Illinois alone without affecting that from either side. If rates from all this territory were properly adjusted before this increase, then Illinois rates become too high as compared with other territory; if they were too low before and the advance increases them to a proper relative point, then the increase is permissible. We should inquire, therefore, how these rates from Illinois compare with those from other parts of central freight association territory. If they are sufficiently high already, this increase should be denied and these carriers should be remitted for relief to the general rate increase case now pending. If, upon the other hand, they are now too low, then this increase should be allowed, and if any general increase is permitted it should be applied from Illinois in common with other localities. The question which we can properly consider at this time is simply one of relation.

It has already been noted that rates upon most commodities between Illinois points and the Atlantic seaboard are stated in groups and in percentages of the Chicago rate. It is also understood that these rates are based, broadly speaking, upon distance. No reason has been suggested why reasonable grain rates would not result if the same method of constructing these rates were to be followed. It is probably true that the competition for this grain is more keen than for most other kinds of traffic. It is also true that slight differences in the rate are not felt by the producer of grain to the same extent that they are by many other industries. From this it may perhaps follow that the groupings by which grain rates are stated need not exactly follow those which apply to other commodities, but we think that upon the whole a fair test of the reasonableness of these Illinois rates, as compared with other rates in central freight association territory, is to inquire whether they are greater or less than would result from the application of these same percentage groups, using the Chicago-New York rate as the base.

The present system of stating grain rates from Illinois was first employed in 1907. At that time the rate from Chicago to New York was 17½ cents, while that from 110 per cent territory in Illinois was 21 cents. Since then the rate from central freight association territory east of the Indiana-Illinois state line has been twice increased, once by increasing the Chicago-New York rate from 17½ to 19½ cents, and again by a second increase of 1 cent. This rate is now 20½ cents, 3 cents higher than in 1907.

The proportional rates up to Chicago have never been increased. The reshipping rate from Chicago has been twice increased, first from 15 to 15½ cents and last from 15½ to 16 cents, and this has resulted in an increase of these Illinois rates by 1 cent. The prevailing rate from

Illinois points in 1900 was 21 cents; is now 22 cents. It seems, therefore, that rates from territory east of the Indiana-Illinois line have been increased 3 cents, while those from Illinois have been increased but 1 cent in the last six years. From this the carriers argue that the present rates are relatively too low and that they will still be too low even though the increases are permitted, since, even after the present increases the sum of the increases in case of Illinois will only be 2 cents.

But this assumes that the relation between Illinois and territory to the east, as it existed in 1907, was a proper one, and this, upon the test suggested, is not correct. The base rate from Chicago to New York was then  $17\frac{1}{2}$  cents. This would produce a rate in 110 per cent territory of 19.2 cents, but the actual rate from that territory was 21 cents, 1.8 above the standard which we have suggested. We must therefore ask, not what has been the relative increase from east and west of the Illinois-Indiana line, but, rather, how do the rates proposed compare with what would result from an application of the percentage groups to the present  $20\frac{1}{2}$ -cents base rate?

The largest Illinois group is the 110 per cent. The percentage rate to this group would be  $22\frac{1}{2}$  cents. The present rate applied in most of this group is 22 cents; the proposed rate is 23 cents. There are some portions of the group from which a lower rate is applied, but the rule is as stated. The proposed rate from this group is nearly one-half cent higher than the percentage.

To the south of the 110 per cent group lies an extensive group taking 116 per cent. The percentage rate from this group would be 23.8 per cent. The proposed rate from the greater part of this territory is 23 cents, and to no part does it exceed  $23\frac{1}{2}$  cents. It will be seen, therefore, that as to this group the proposed rate is lower than the percentage basis. The same thing is true of the 117 per cent group, which is nearly as large as the 110 per cent. While the percentage rate would be 24 cents, to a portion of this group the proposed rate is 23 cents, to another part  $23\frac{1}{2}$  cents, and to but a comparatively few stations 24 cents.

In southern Illinois there is an extensive group taking a 120 per cent rate. The percentage scale to this group would be 24.6. The proposed rate is in no case higher than 24 cents, and in some instances is  $23\frac{1}{2}$  cents.

Twenty-five representative stations were selected in different parts of the state, and from these stations present rates, proposed rates, and percentage rates were compared. The proposed rates exceed the present rates by approximately three-fourths of 1 cent, and the percentage rates exceed the proposed rates by four-tenths of 1 cent.

Looking at the state of Illinois as a whole, there can be no doubt that the proposed rates are on the average somewhat less than would



result from the application of the percentage groups to these grain rates. It is probably true that more grain moves from one section of Illinois than from others, so that the weighed average of actual shipments might not be the same as the territorial average; but grain is produced freely in all parts of Illinois, and the record before us indicates that if the same test could be applied to the actual movement of the grain the result would not be much different.

We are mindful of the fact that these groupings in Illinois have not been in all cases properly constructed and that they must be to some extent recast. This subject has been recently before the Commission in *Springfield Commercial Asso. v. P. R. R. Co.*, 28 I. C. C., 511, in which we held that Springfield, which is now in the 117 per cent group, ought to be given a rate not in excess of 113 per cent. Other changes must undoubtedly be made in southern Illinois, but after making allowance for all this we are still of the opinion that the proposed rates upon the average are not in excess of those which would result if grain rates were to be constructed as rates upon other commodities are, and this being so, we think it must be held that these proposed rates from Illinois are fairly in line with corresponding rates from other portions of central freight association territory.

It should also be noted that under the adjustment of tariffs which prevails in Illinois the grain producer of that state has the benefit of markets in all directions and of the keenest competition in the sale of his grain. It can be affirmed with confidence that grain from the state of Illinois will, after these proposed increases have taken effect, find a market under as favorable circumstances and at as favorable rates, all things considered, as other parts of central freight association territory. It probably is true, as urged by the millers from southern Illinois, that, mile for mile, rates from that section are higher than from the vicinity of Minneapolis and St. Paul, but it is well understood that the Great Lakes afford the northwest an avenue to eastern markets which properly commands a lower rate of transportation than would the all-rail route alone.

These tariffs under suspension involve not only a slight increase in grain rates from Illinois in all directions but also a considerable readjustment of rates between localities and different kinds of grain. There are some reductions. In the past the rate on wheat seems to have been in many cases higher than that upon corn, while in other instances the reverse may have been true. These tariffs name the same rate from all points. Now the Commission has in nowise considered the propriety of these local adjustments. In approving this increase as a whole we do not in any way pass upon the lawfulness of individual rates, which may be brought to our attention upon complaint and considered upon their merits.

It appears that in the past certain lines have maintained through rates from points of production to Toronto, Canada, and perhaps other points, which have been equivalent to the regular sixth-class rate. It is now proposed to cancel these tariffs, to apply up to Chicago the same proportional rates which are applied when the final destination is to the east, and to establish a reshipping rate of 15 cents to Toronto. Chicago interests insist that this will make a rate in excess of the sixth-class rate, and they ask that these proportional tariffs as to Toronto be adjudged unlawful for that reason.

There is certainly great force in the suggestion that the grain rate ought not to exceed the sixth-class rate, but there is no apparent reason why these proportional rates up to Chicago should be different when the traffic is intended for Toronto than when for New York. The trouble would seem to be in the reshipping charge from Chicago, or it may be that the traffic ought to move by some direct line and not by Chicago at all. Again, it will be noted that what Chicago desires is a through rate, with transit at Chicago; but this transit privilege has led to all sorts of trouble in the past, and we think should be entirely eliminated at Chicago in so far as that is possible. For these reasons we do not consider, at this time, these rates to Toronto. If too high, they may be presented to the Commission by a separate complaint.

An order will be issued in accordance with the foregoing views.

23 I. C. C.

No. 5241.

IOWA STATE BOARD OF RAILROAD COMMISSIONERS

v.

ARIZONA EASTERN RAILROAD COMPANY ET AL.

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*Submitted October 17, 1913. Decided December 1, 1913.*

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1. Defendants will be expected to establish rates between the Iowa stations of record herein, according as the stations fall within the prescribed zones, and Colorado and Utah common points, on or before April 1, 1914.
2. The mileage rates proposed in the original report adhered to, except that they should not apply to southern Kansas and that the mileage rates for class A should be somewhat higher than for class 5.
3. Certain arbitrariness over the one-line haul prescribed in case of a two-line haul.

*Clifford Thorne* and *J. H. Henderson* for complainant.

*F. W. Lehmann, jr.*, and *E. G. Wylie* for Greater Des Moines Committee, Incorporated.

*G. T. Bell* for Sioux City Traffic Bureau.

*E. J. McVann* for Commercial Clubs of Omaha and Council Bluffs.

*C. O. Dawson*, *W. T. Harper*, and *G. W. Bramhall* for Ottumwa Commercial Association.

*A. W. Dowler* for Fort Dodge Shippers' Association.

*W. F. Dickinson* for Rock Island lines.

*A. P. Humburg* for Illinois Central Railroad Company.

*F. G. Wright* for Missouri Pacific Railway Company.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*H. A. Scandrett* and *F. H. Wood* for Union Pacific Railroad Company.

*J. G. Morrison* for Chicago Great Western Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

The Commission held, by its original report in this case, 28 I. C. C., 193, that, for the purpose of stating rates between interior Iowa points and Colorado and Utah common points, the state would be territorially divided into five zones, the difference between the Missouri and the Mississippi rivers in the rate being distributed pro rata over the zones.

The complainant was directed to file with the Commission a statement showing the stations which should, in its opinion, fall into these

several zones. This has been done; the defendants have filed their objections to these zones, and the parties have been further heard.

The opinion of the Commission states that the first zone shall begin with the Missouri River, and that rates from this zone shall be 20 per cent of the total difference between the rivers higher than from the Missouri River. The plan suggested by the complainant is to begin, not at the Missouri River, but at a line east of the Missouri River, the effect of this being to extend the Missouri River rate to certain territory east of that river and to somewhat narrow upon the eastern border of the state the zone from which the Mississippi River rate applies. The reason for this suggestion by the complainant is as follows:

The complaint in this case was that the combination of rates from the east into interior Iowa, plus the rate from the interior Iowa point to destination, exceeded the combination upon the Mississippi River and upon the Missouri River, and the Commission found that this discrimination did in fact exist; that it ought to be removed, or at least diminished, and suggested for this purpose the creation of these zones. It is apparent that, if the discrimination is to be removed, the Missouri River rate to western territory must apply from the same points to which the Missouri River rate from the east applies. If a zone be created immediately east of the Missouri River from which the rate to the west is higher than from the Missouri River, while the Missouri River rate from the east is applied to that territory, then manifestly the same discrimination exists which the Commission attempted to remove.

Carriers were instructed in the *Interior Iowa Cities case*, 28 I. C. C., 64, decided at the same time as this case, to so readjust their rates from the east as to distribute across the entire state the difference in rates between the rivers. They stated upon the present hearing that it was their purpose to do this, not by creating zones, but by gradually building up the rate from the Missouri River, and they admitted that, while the rates had not been definitely fixed, there would be a considerable territory directly east of the Missouri River which would take the Missouri River rate, so that upon the admission of the defendants the complainant is correct in saying that if the first zone begins at the Missouri River, the very discrimination which it was intended to prevent would be created to an extent.

We see no good reason why the zones as proposed by the complainant may not be established. No valid objection was suggested by the defendants, and we approve that plan. The stations falling within these zones have been named and are satisfactory to the interior towns of Iowa. A list of these stations has been served upon the defendants and filed in this record. No order will be made for

the present, but the defendants will be expected to establish rates between these stations and Colorado and Utah common points on or before April 1, 1914. If in working out these rates there seems to be any special reason for transferring particular stations from one zone to another, the defendants are at liberty to call that to the attention of the Commission.

By its original opinion the Commission suggested a mileage schedule to be applied between points in Iowa and points to the west of the Missouri River in Kansas and Nebraska. Both parties were given the privilege of filing objections to this mileage scale. Such objections have been filed and a further hearing had.

The defendants object at the outset that no mileage scale should be established, but after hearing what they have to suggest in this respect we are still of the opinion that the best solution for the present, and the only possible permanent solution of this question for the future, lies in the establishment of such a scale. Nor has any valid reason been assigned against this. We are of the opinion, however, that while this scale should apply at all points in Nebraska, it should not apply to southern Kansas, but only to points upon the main line of the Santa Fe from Kansas City to La Junta and in territory north.

The second objection of the defendants to this scale is that the scale itself is not properly constructed, especially in that the same rates are prescribed for class 5 and class A. They insist that class A should take a somewhat higher rate than the fifth class. Incidentally they criticize the Commission for not having prescribed in the mileage scales established by it for class rates a uniform relation between the classes.

The Commission has long realized the desirability of establishing some common percentage which all classes should bear to the first-class rate, so that the naming of the first-class rate would automatically fix that of every other class. It has not felt free, up to the present time, to establish such a percentage for use in all parts of the country. The rates established by the carriers themselves present endless and very wide differences in the relation between the classes. To apply the same percentage relation in every part of the country would be to throw out of proportion the rates prescribed by the Commission as compared with other rates in effect in that territory, and, therefore, to create confusion and discrimination instead of securing uniformity and equal treatment.

The rates made by many state commissions and by the carriers themselves vary not only between different schedules but for different distances in the same schedule; that is, the relation between the different classes for 100 miles is not the same as for 200 or 300 miles.

The Commission, in prescribing the present scale, did establish a relation between the different classes which was preserved at all distances, that relation being—

Class ----	1	2	3	4	5	A	B	C	D	E
Rate-----	100	84	66½	50	40	40	35	30	25	20

Before establishing this relation we examined carefully the schedules, both those named by state commissions and those voluntarily established by the carriers, which were applicable in this section, and in comparison with which this schedule must be applied. Those rates differed much among themselves, but this relation seemed to be a fair composite of the schedules with which these would come most into competition. We have reexamined that question in the light of all which has been said by both parties, and our conclusion still is that, for the most part, while we are not prepared to suggest that this relation should be adopted for all sections of the country, still, that it is in the main a just one for the section in which it is to apply. The doubtful question is as to whether class 5 and class A should be the same.

The Commission had before it in establishing this schedule the interstate schedules of the carriers themselves from points in Iowa to points in Minnesota and from points in Iowa to points in Missouri. In both these voluntary schedules class A and class 5 are the same, and they are, in both cases, 40 per cent of class 1. An examination of the state rates in that vicinity and elsewhere shows that, on the average, class A is not higher than class 5. A composite of 40 railroad schedules in western classification territory shows class A slightly higher than fifth class. We are inclined to think that the intent of the carriers themselves has generally been to make class A somewhat higher than class 5.

It is difficult to see why, in a scientific schedule, class A and class 5 should be the same. There is no apparent reason for maintaining exactly the same rate on two classes, since the object of creating different classes is to apply different rates. Both these classes are largely applied to carload traffic, but the carriers claim, and we think correctly, that the carload loading in class A is distinctly lighter than in the fifth class. Upon further consideration we are of the opinion that class A in this territory ought to be somewhat higher than class 5.

The carriers urge that both class 5 and class A in our schedule are too low, and they point to other schedules established by this Commission and by the states which fix these classes at a higher percentage than that adopted by us. An examination of rates in all parts of the country does show, we think, that the general rule is to make these classes more than 40 per cent, and usually distinctly more than

40 per cent, of the first-class rate. The Washington commission makes these two classes 50 per cent of first class, and the general average is between 45 and 50 per cent. We are not convinced of the propriety of this. The loading under which first-class merchandise moves will not on the average exceed five tons to the car. The average loading at which fifth-class merchandise moves must be between 12 and 15 tons to the car. The value of first-class matter is very much in excess of fifth class. In our opinion 40 per cent of the first-class rate is enough, ordinarily, for the movement of fifth-class merchandise. We do think that class A should be somewhat higher, and have concluded to modify our percentage scale by increasing this class to 45 instead of 40. The relation of the classes as thus amended would therefore be:

Class ----	1	2	3	4	5	A	B	C	D	E
Rate-----	100	84	66½	50	40	45	35	30	25	20

The defendants urge that, whatever schedule is established for a one-line haul, certain arbitraries should be added in case of a two-line haul. The Commission has, in several instances, recognized the propriety of naming a somewhat higher rate where the movement is over two lines than when it is over a single line. In the *Oklahoma-Texas case*, 26 I. C. C., 520, we established a schedule of class rates to apply between points in Oklahoma and points in Texas, and in that case we fixed certain arbitraries by which a two-line haul might exceed the one-line. In the *Oklahoma Live Stock and Packing-House Products case*, 23 I. C. C., 656, we allowed an addition of 2½ cents per 100 pounds when the haul was over two lines. The same rule has been adopted in several other cases. We think it should be applied in this case. The cost of the service is more, and the carriers may properly charge more. The following arbitraries, in cents, may be added:

Class ----	1	2	3	4	5	A	B	C	D	E
Rate-----	5	4	3	3	2½	2½	2	1½	1½	1

The carriers suggest that it will often happen that the short distance between two points will be over two or more lines, while the originating line could, by its own somewhat longer route, handle the traffic, and they inquire what rule is to be followed in this case.

Whenever the short line is exceeded by more than 5 per cent by the long line, the rate should be constructed by the short line adding the two-line arbitraries above given, unless the rate by the long line is lower. The carrier may meet that rate by the long line and decline to establish a joint through rate by the short line, unless the line is so circuitous as to be unreasonably long within the definition of the fifteenth section.

The complainant earnestly insists that this schedule of rates is altogether too high, while the defendants urge that it is too low. We are not establishing a schedule of rates to apply in Iowa or Minnesota or Missouri, nor in any state east of the Missouri River, but are rather fixing this schedule between points in Iowa and points west of the Missouri River. In determining upon that scale we have, perhaps, been somewhat influenced by the fact that the Missouri River must be crossed, and by the further fact that when traffic moves to a point much west of the Missouri River it reaches a territory where traffic is less dense and where rates may properly be somewhat higher. Upon further reflection we are inclined to adhere to the scale already adopted, with the modification just stated.

The carriers point out that this scale is so low that in some instances the rate from the Missouri River point to a Nebraska destination will exceed the rate from some Iowa point farther east. This means that our scale is lower than the Nebraska state scale. In case of any intermediate point in the state of Iowa or upon the Iowa side of the Missouri River, the fourth section must apply and the rate must be reduced. That would not probably follow as a matter of law with rates wholly in the state of Nebraska.

Both parties call attention to the fact that at the present time there are some instances where the sum of the local Iowa state rate, added to the local Nebraska rate, makes a less through charge than our schedule, and the suggestion is that if the Nebraska rates are reduced these instances will be multiplied. Upon this point it can only be said that the rates which we prescribe for the through movement are, in our opinion, reasonable. If carriers publish for interstate use these state rates they must undoubtedly observe the rule of the fourth section and reduce their through charge so as not to exceed the combination of locals, unless permission to the contrary is granted upon application to this Commission. Whether, as a practical matter, they can decline to publish these state rates for interstate movement and maintain the higher through interstate charge is a point upon which no opinion is expressed.

An order will be issued establishing class rates, which will be made effective on April 1, 1914, and which will require the establishment of these rates upon 30 days' notice.



No. 5269.

TEXARKANA FREIGHT BUREAU ET AL.

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY ET AL.

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*Submitted October 16, 1913. Decided December 8, 1913.*

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Complainants allege that class and commodity rates from St. Louis, Kansas City, and Memphis, and from points in central freight association and western trunk line territories to Texarkana, Ark., and Texarkana, Tex., are unjust, unreasonable, and discriminatory as compared with the rates from the same territory of origin to Shreveport, La. Intervener and defendants state that the rates to the latter point are influenced by water competition; *Held:*

1. The history of class rates to Shreveport and Texarkana and a comparison of these rates with rates for equal distances to points entirely uninfluenced by water competition, show that the level of class rates from St. Louis and defined territories to Shreveport is no longer influenced by water competition.
2. Class rates from St. Louis, Kansas City, Memphis, and defined territories to Texarkana should not exceed those contemporaneously maintained from the same points of origin to Shreveport, La. Texarkana rates should be regarded as maximum rates to all points intermediate via the direct lines.
3. Suggested that commodity rates to Texarkana, which to Shreveport make through the lower Mississippi crossings, should not exceed those to the latter city by more than 6 cents per 100 pounds. This amount not to be considered as a fixed differential but merely as a maximum. Commodity rates to Texarkana which to Shreveport make via the direct lines should not exceed those contemporaneously maintained to the latter point.
4. A readjustment of rates which make through and from the lower Mississippi River crossings to the Shreveport group suggested.
5. In the making of joint through rates on long-distance traffic to local or non-competitive points, the differentials above the rates to the basing points should bear some reasonable relation to the total distances involved. *Board of Trade of Carrollton, Ga., v. C. of G. Ry. Co.*, 28 I. C. C., 154, 165.
6. While carriers may properly meet water competition, the maintenance of a lower rate to one point than to other points which are intermediate can not be justified on the ground that it is necessary to suppress water competition.

*F. S. Bright and Harry Peyton* for complainants.

*S. H. West and Edward A. Haid* for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

*Henry G. Herbel, Martin L. Clardy, and Fred G. Wright* for St. Louis, Iron Mountain & Southern Railway Company and Missouri Pacific Railway Company.

*Henry G. Herbel and Fred G. Wright* for Texas Pacific Railway Company.

*John G. Schaich* for Kansas City Southern Railway Company and Texarkana and Fort Smith Railway Company.

*T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

*Fred H. Wood* for Chicago & Eastern Illinois Railroad Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; and Paris & Great Northern Railroad Company.

*E. N. Clark* for Denver & Rio Grande Railroad Company.

*James G. Wilson* for Houston & Texas Central Railroad Company; Louisiana Western Railroad Company; and Morgan's Louisiana & Texas Railroad & Steamship Company.

*Joseph M. Bryson and C. S. Burg* for Missouri, Kansas & Texas Railroad Company.

*Alexis S. Coke* for Missouri, Kansas & Texas Railroad of Texas.

*C. P. Dowlin* for Fort Worth & Denver City Railway Company.

*Geo. T. Atkins, jr.,* for Shreveport Chamber of Commerce, intervenor.

*G. S. Maxwell* for Dallas Chamber of Commerce.

#### REPORT OF THE COMMISSION.

##### MEYER, Commissioner:

This case involves all the class rates and numerous commodity rates from St. Louis and Kansas City, Mo., and Memphis, Tenn., and from points in central freight association and western trunk line territories, to Texarkana, Tex., and Texarkana, Ark., published in Southwestern lines' tariff I. C. C. No. 905, as compared with rates from the same territory of origin, to Shreveport, La., published in Southwestern lines' tariffs I. C. C. Nos. 934 and 880. These tariffs have been superseded by Southwestern lines' tariffs I. C. C. Nos. 965, 978, and 955, respectively, which name the rates at present in effect to Texarkana and Shreveport. Complainants allege that the class and commodity rates to Texarkana are unjust, unreasonable, and discriminatory, and in violation of section 4 of the act to regulate commerce, in so far as they exceed those in effect from the same points of origin to Shreveport. Complainants ask that from the same points of origin, and for the same classes and commodities, defendants be required to observe the rates to Shreveport as the maximum rates to Texarkana.

The complaint was brought by the Texarkana Freight Bureau, Texarkana Board of Trade, and a large number of individuals, firms, and corporations engaged in business at Texarkana. The Shreveport

Chamber of Commerce intervened on behalf of the shippers located at Shreveport and sought to defend the existing relationship between the two cities. The defendants are the carriers who participate in this traffic, and who have joined in publishing the rates complained of in Southwestern lines' tariff I. C. C. No. 905.

Texarkana, Ark., and Texarkana, Tex., are located on the boundary line of Arkansas and Texas, and while under separate municipal governments, are physically one continuous city. Shreveport is located on the Red River, 72 miles south of Texarkana by the direct route of the Kansas City Southern. Both cities are jobbing centers. In the three tariffs above referred to, specific class rates are published from St. Louis, Kansas City, and Memphis. From all the remaining territory covered by these tariffs, class rates are made by adding differentials, as specified in the tariffs, to the rates from St. Louis or from Kansas City, which are taken as basing rates. The rates based upon St. Louis are not restricted to traffic via St. Louis, but also apply on the movement via Kansas City or Memphis. The rates from Kansas City are the same as those from St. Louis, while those from Memphis are lower. The relationship of class rates, per 100 pounds, to Shreveport and Texarkana is as follows:

CLASS RATES FROM ST. LOUIS AND KANSAS CITY.

	1	2	3	4	5	A	B	C	D	E
To Texarkana.....	\$1.27	\$1.11	\$0.96	\$0.86	\$0.65	\$0.69	\$0.55	\$0.47	\$0.41	\$0.34
To Shreveport.....	1.25	1.08	.95	.78	.60	.65	.55	.47	.41	.34
Difference.....	.02	.03	.01	.08	.05	.04	.....	.....	.....	.....

CLASS RATES FROM MEMPHIS.

	1	2	3	4	5	A	B	C	D	E
To Texarkana.....	\$1.17	\$1.01	\$0.88	\$0.79	\$0.60	\$0.62	\$0.50	\$0.42	\$0.36	\$0.29
To Shreveport.....	1.15	.98	.87	.71	.55	.68	.50	.42	.36	.29
Difference.....	.02	.03	.01	.08	.05	.04	.....	.....	.....	.....

It will be noted that from the three gateways—St. Louis, Memphis, and Kansas City—the rates on the last four classes are the same to Texarkana as to Shreveport, while on the first six classes the rates are higher to Texarkana than to Shreveport. It will also be observed that the differentials are the same in the case of Memphis as in the case of St. Louis and Kansas City to the respective destinations. The rates from Chicago, Milwaukee, Cleveland, and Pittsburgh and all other points from which traffic moves through these gateways are higher to Texarkana than to Shreveport by the same amount.

The tariffs to which references are made above also publish the commodity rates specified in the complaint. Some of the commodity rates are made by the use of differentials above the basing rate, and

others are published as through commodity rates. Commodity rates of both varieties are under attack.

In support of their allegations of discrimination complainants urge that since the distance from St. Louis, Kansas City, Memphis, and all points in defined territories is less to Texarkana than to Shreveport, rates to the former point should not be higher than those to the latter. It is further alleged that the short line from St. Louis, Kansas City, and defined territories to Shreveport is in each instance through Texarkana, which is 72 miles nearer than Shreveport, and that, consequently, the maintenance of higher rates to Texarkana than to Shreveport constitutes a violation of the fourth section. The complainants' petition also attacks the rates to Texarkana as unreasonable *per se*. No testimony was offered upon this point, and at the argument counsel admitted that for want of testimony the Commission could not fairly decide this issue in the present proceeding.

In making comparisons of distances from St. Louis and defined territories complainants use the direct line of the Iron Mountain to Texarkana, a distance of 490 miles, and beyond Texarkana to Shreveport the Kansas City Southern, a total distance from St. Louis of 562 miles. Defendants allege that the direct line of the Iron Mountain from St. Louis to Texarkana should not be used in figuring comparative mileages, for the reason that it is operated through the Ozark Mountains and shows extremely heavy grades and that, with the exception of local freight business, it has for some time past been used exclusively for passenger service. In 1903 the Iron Mountain began to haul business originating at and routed via St. Louis over the line on the east bank of the Mississippi River, crossing the river at Thebes, Ill. The Cotton Belt, it is stated, also uses the east-side line. This route presents much more favorable operating conditions than the direct line via Bismarck, Mo. It should be noted, however, that prior to 1903 the direct line was used for freight service and that the rate was 17 cents lower on first class to Texarkana, and correspondingly lower on the other classes, than the rates at present in effect. The distance from St. Louis to Texarkana over the route via Thebes is 526 miles. Over this route the short-line distance to Shreveport makes via Lewisville, Ark., a distance of 589 miles. If we accept defendants' routing, the short line from St. Louis to Shreveport will no longer make through Texarkana; nevertheless, the distance to Shreveport will still exceed the distance to Texarkana by 63 miles. The average mileage from St. Louis to the Shreveport group, embracing Shreveport, Alexandria, and Monroe, is 563 miles, 37 miles in excess of what defendants claim to be correct to Texarkana. It is admitted by defendants that the

short line from Kansas City to Shreveport is through Texarkana, and that the distance is 72 miles greater; the mileage via the direct line of the Kansas City Southern is 488 miles to Texarkana and 560 miles to Shreveport. The average mileage from Kansas City to the Shreveport group is 636 miles, 148 miles in excess of the Texarkana mileage. The distance from Memphis to Texarkana is 293 miles via the Iron Mountain, and to Shreveport 321 miles via the Rock Island and the Cotton Belt, 28 miles greater than the distance to Texarkana. The average distance from Memphis to the Shreveport group is 307 miles, 14 miles in excess of the distance to Texarkana.

The intervener and the defendants, in attempting to justify the maintenance of lower rates at Shreveport than at Texarkana, state that the rates to the former point are influenced by water competition. It is alleged that active water competition on the Mississippi River has depressed the rates from St. Louis and defined territories to New Orleans and Vicksburg and that potential water competition on the Red River has depressed the rates from New Orleans to Shreveport. It is stated that in like manner the rates to Alexandria, which is also on the Red River, and to Monroe, on the Washita, are depressed. It is alleged that the rates to the Shreveport group are maintained lower than rates to intermediate points because of their situation upon navigable streams. Intervener and defendants referred to the case of *Monroe Progressive League v. St. L., I. M. & S. Ry. Co.*, 15 I. C. C., 534, where it was held that the rate adjustment which groups Monroe, Alexandria, and Shreveport under common rates is not unreasonable and not unjustly discriminatory against Monroe. It should be noted, however, that in the case referred to the Commission did not consider the rates to the Shreveport group in relation to rates to Texarkana or other intermediate points, and that the rates from St. Louis to the Shreveport group, while varying in slight degree, were at that time substantially the same as the rates from St. Louis to Texarkana.

The testimony shows that from 1858 until 1905 boats were regularly operated on the Red River and that a large volume of freight was shipped by water to Shreveport. No boats have been operated since 1905, with the exception of one, which made a trip in 1910. Defendants contend that the channel is navigable and that the boats are kept out of service by the adjustment of rates on the rail carriers. It was stated that an appropriation of \$200,000 is available for the improvement of the Red River, and that even a slight increase in rail rates to Shreveport will bring the boats back into service.

A large part of the record is devoted to water competition. A natural interpretation of the expressed policy of the carriers is that they regard meeting water competition as the equivalent of annihilation.

lating the river traffic. Rail rates must be kept so low that river boats can not live on them. That seems to be the argument.

Records of the government engineers show that the level of the Red River at Shreveport was below zero, the point at which engineers believe navigation to be possible, 179 days in 1909, 180 days in 1910, 237 days in 1911, and 172 days in 1912, but it was testified by the freight traffic manager of the Steamboat Traffic Association that navigation is possible when the level of the river is several feet below the government zero mark. Witness also called attention to Sedgmann's tariff I. C. C. No. 46, which named lower all-water rates from Atlantic seaboard territory via Gulf boat lines and the Shreveport Transportation Company to Alexandria, Shreveport, and all river points than the water-and-rail rates published via Gulf boat lines and rail carriers from New Orleans to the same points by the following differentials: First class, 18 cents; second class, 12 cents; third class, 10 cents; fourth class, 5 cents; fifth class, 3 cents; class A, 3 cents; class B, 3 cents; class C, 3 cents; class D, 3 cents; and class E, 3 cents. Examination of this tariff shows that the rates via the river boat line became effective on March 15, 1910, and were canceled by supplement 1 on May 17, 1910. They were discontinued because of the failure of the boat line to continue operating. In Louisiana freight committee's tariff I. C. C. No. 4, effective January 20, 1906, all water rates were maintained from seaboard territory to Shreveport at the same differentials under the rates in effect by water to New Orleans and rail beyond. These rates were effective until April 15, 1909. In this connection it is argued that competition of eastern markets which enjoy low water-compelled rates via New Orleans or any of the Gulf ports to Shreveport has its effect in the maintenance of lower rates from St. Louis and defined territories to Shreveport than to Texarkana. Testimony introduced by the intervener shows that Shreveport merchants receive a large portion of their goods from seaboard territory. The present class rates, uninsured, in cents per 100 pounds from Atlantic seaboard territory to Shreveport via New Orleans or Gulf ports and rail carriers beyond, are as follows:

Class----	1	2	3	4	5	A	B	C	D	E
Rate ----	112	104	93	80	69	72	59	50	47	39

It will be noted that the first three classes are considerably lower than rates from St. Louis to Shreveport.

Via south Atlantic ports and rail the following rates are published, uninsured, in cents per 100 pounds, from seaboard territory to Shreveport:

Class----	1	2	3	4	5	A	B	C	D	E
Rate ----	124	112	99	84	72	75	62	53	50	42

28 I. C. C.

Louisiana Freight Committee tariff I. C. C. No. 4, effective January 20, 1906, provided the following all-rail class rates, in cents per 100 pounds, governed by western classification for seaboard territory to Shreveport, La.:

Class----	1	2	3	4	5	A	B	C	D	E
Rate ----	142	124	109	90	79	82	65	56	53	45

These rates remained in effect until November 9, 1909, since which time no through rates have been published and combination over Vicksburg or New Orleans became applicable.

The Texas & Pacific was the first railroad to reach Shreveport from New Orleans. It was stated that this carrier met the rates it found in effect from New Orleans to Shreveport, and has maintained them with practically no change from 1881 up to the present time.

Defendants further show that at Shreveport there are three north and south lines and five east and west lines, the latter operating from the Mississippi River, while at Texarkana there are three north and south lines and one line operating east and west. It is argued that the east and west lines at Shreveport, together with water competition, force rate making, so far as Shreveport is concerned, through the lower Mississippi river crossings, and that the north and south lines operating through Texarkana must meet these rates. It is further argued that the Vicksburg, Shreveport & Pacific and its closely allied lines operate as far east as Cincinnati and offer a greater number of actual routes from St. Louis to Shreveport than obtain to Texarkana, namely, through Meridian, Miss., in connection with the Mobile & Ohio; through Jackson, Miss., in connection with the Illinois Central; through Vicksburg, Miss., in connection with the Yazoo & Mississippi Valley; through Monroe, La., in connection with the Iron Mountain; and through Ruston, La., in connection with the Rock Island.

It is also argued that any reduction in rates at Texarkana will be reflected in rates to points in Arkansas, Oklahoma, and Texas, and would mean serious reduction in the revenues of carriers in the southwest. Reference is made to the case of *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463, where it was held that on the whole defendant carriers seem not to have prospered as carriers in other parts of the country have prospered. Following the basis laid down in this opinion, defendants prepared a composite picture showing results of operation for the entire systems of the Atchison, Topeka & Santa Fe; Kansas City Southern; St. Louis, Iron Mountain & Southern; Missouri, Kansas & Texas; and the St. Louis & San Francisco, with the exception in the latter case of the lines along the Gulf. Defendant's statement shows first the total operating revenue, then the total operating expenses, and then the net

operating revenue. The aggregate income from operation is arrived at by adding to the latter the rentals received. From this amount is deducted taxes, deficits for outstanding operations, and net debit for hire of equipment, leaving a balance available for payment of rents, interest, and dividends. Reducing that amount to an available balance per mile of road it is found that in 1912 the sum available was \$2,420.37 per mile, as against \$2,562.85 in 1909, at the time of the decision in the *Texas cases, supra*. The equivalent valuation per mile of road on capitalization of this return at 7 per cent is given. A similar table was presented for the Texas subsidiary lines of the trunk lines above mentioned. It is argued that these statements show that the carriers in the southwest are not prospering and that consequently no reduction in rates at Texarkana should be made.

Intervener contends that Shreveport is at a disadvantage in competition with Texarkana because its outbound rates to points in Arkansas and Texas are higher on the same class of commodities than those from Texarkana. Elaborate comparisons are also made by defendants of the carload rates inbound and less-than-carload rates outbound at Texarkana, Shreveport, and Dallas, Tex. It is argued that the result shows Texarkana as a distributing center to be more than on an equality with Shreveport on the south and Dallas on the west. If the outbound rates at Shreveport are in fact incorrect, they should be adjusted, but that is not a part of this case. We are here concerned with the inbound rates to Shreveport and Texarkana, which should be adjusted independent of the outbound rates, and in such manner as to avoid unjust discrimination. Dallas enjoys outbound rates no higher than those from Texarkana. Its inbound rates are upon the same basis from St. Louis as St. Louis rates to all Texas common points—20 cents above Texarkana and 22 cents above Shreveport on first class and correspondingly higher for the other classes. With certain exceptions, commodity rates are also common to all Texas common points. The possibility that the grouping of Dallas with Texas points which are farther distant from St. Louis may work to its detriment is no argument against an equitable adjustment of rates to Texarkana. The distance from St. Louis to Dallas is 686 miles, while the average distance from St. Louis to the common points has been given as 800 miles. Texas common-point territory covers the greater part of the most populous section of the state and is approximately 450 miles square.

The fundamental question in this case is whether the conditions and circumstances at Shreveport are so different from those prevailing at Texarkana that they warrant the maintenance of lower rates for the longer haul.



Class rates to Texarkana from St. Louis, Kansas City, and Memphis are in each case observed as maxima to all intermediate points. In the case of Shreveport the situation is entirely different. Not only are the rates to Texarkana, which is intermediate, higher than those to Shreveport, but the rates from St. Louis, Kansas City, Memphis, and defined territories to a large number of other intermediate points are higher than those to Shreveport. First-class rates from St. Louis are typical. To Texarkana the first-class rate from St. Louis is \$1.27. To stations on the Texas & Pacific between Texarkana and Shreveport it is increased to \$1.47, and to stations on the Kansas City Southern to \$1.30. At Shreveport it drops to \$1.25. Over the route of the Cotton Belt via Lewisville, Ark., to Shreveport the first-class rates to Lewisville and points between Lewisville and Shreveport are \$1.27. Over routes in connection with the Vicksburg, Shreveport & Pacific the first-class rate from St. Louis to points on that line between Monroe and Shreveport is \$1.35. When traffic is routed via New Orleans it must pay as high as \$1.47 first class to stations between Alexandria and Shreveport. In each case the rate drops to \$1.25 at Shreveport and the other points in the Shreveport group. Thus it is seen that no matter how traffic is routed from St. Louis and defined territory it must pay a higher rate to stations intermediate to Shreveport than to Shreveport. So also on traffic coming from eastern seaboard territory via New Orleans and the Gulf ports class and commodity rates are lower to Shreveport, Monroe, and Alexandria than to stations intermediate. At first glance this might seem to substantiate defendants' argument that the rates to Shreveport are depressed below normal because of its location on the Red River. It should be borne in mind, however, that while the rates to Shreveport may be abnormal via the circuitous routes through the lower Mississippi River crossings, due to water competition to the crossings and possibly potential water competition beyond, this fact does not prove that rates by the direct routes are abnormal.

The history of class rates from St. Louis and defined territories to Shreveport during the last twenty-five years indicates that these rates no longer reflect water competition. We show below the changes that have from time to time been made in class rates, per 100 pounds, to Shreveport and Texarkana:

CLASS RATES FROM ST. LOUIS TO SHREVEPORT, LA.

Years.	1	2	3	4	5	A	B	C	D	E
1899.....	\$1.10	\$0.94	\$0.80	\$0.68	\$0.51	\$0.58	\$0.48	\$0.43	\$0.38	\$0.31
1904.....	1.17	1.01	.87	.74	.56	.63	.53	.47	.41	.34
1909.....	1.25	1.10	.95	.78	.60	.65	.55	.47	.41	.34
1910 to date.....	1.26	1.08	.95	.78	.60	.65	.55	.47	.41	.34

## CLASS RATES FROM ST. LOUIS TO TEXARKANA, ARK.-TEX.

Years.	1	2	3	4	5	A	B	C	D	E
1899.....	\$1.10	\$0.99	\$0.87	\$0.78	\$0.66	\$0.63	\$0.53	\$0.48	\$0.38	\$0.31
1905.....	1.17	1.07	.96	.84	.61	.68	.58	.42	.41	.34
1906.....	1.17	1.07	.96	.82	.61	.64	.53	.46	.39	.33
1909.....	1.27	1.15	1.04	.86	.65	.69	.55	.47	.41	.34
1911 to date.....	1.27	1.11	.96	.86	.65	.69	.55	.47	.41	.34

The above table shows that prior to 1904, when there was actual water competition on the Red River, the rates from St. Louis to Shreveport and Texarkana were maintained at a comparatively low figure. With the disappearance of active water competition to Shreveport the rates have been gradually increased. Those at present in effect to Shreveport are higher than in 1899 on first class by 15 cents; second class, 14 cents; third class, 15 cents; fourth class, 10 cents; fifth class, 9 cents; class A, 7 cents; class B, 7 cents; class C, 4 cents; class D, 3 cents; and class E, 3 cents. These increases would seem to indicate that water competition from St. Louis and defined territories to Shreveport no longer influences the level of class rates.

In this connection attention should be again called to the low rates maintained from eastern seaboard territory to Shreveport via boat lines to New Orleans and rail carriers beyond. The first-class uninsured rate from seaboard territory to Shreveport is \$1.12. To destinations between New Orleans and Shreveport the maximum first-class uninsured rate is \$1.42. To Texarkana it is \$1.24, while to points between Shreveport and Texarkana it is as high as \$1.72.

That the competition of east and west lines can have no effect in maintaining lower class rates to Shreveport than to Texarkana, whatever the situation may be with regard to commodity rates, is shown by the following statement of rates from St. Louis to Vicksburg and New Orleans and from Vicksburg and New Orleans to Shreveport. Rates from St. Louis to Vicksburg and New Orleans are controlled by southern classification and are, in cents per 100 pounds, as follows:

Class----	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate----	90	75	65	50	40	35	25	38	25	20	23	57	45

Rates from Vicksburg and New Orleans are controlled by western classification and are, in cents per 100 pounds, as follows:

Class----	1	2	3	4	5	A	B	C	D	E
Rate-----	60	50	40	30	22	25	20	17	16	15

Since the class rates to and from the lower Mississippi River crossings are published under separate classifications, it is difficult to figure exact combinations, but it is obvious that the combination of strictly class rates will not be as low as those published direct to Shreveport in the tariffs under consideration.

We have made the following comparison of class rates, per 100 pounds, from St. Louis to Shreveport and Texarkana with those from St. Louis to certain points in Oklahoma:

CLASS RATES FROM ST. LOUIS.

Class.	To Shreveport.	To Milfay and Chickasha, Okla.	To Texarkana.	Class.	To Shreveport.	To Milfay and Chickasha, Okla.	To Texarkana.
1.....	\$1.25	\$1.30	\$1.27	A.....	\$0.65	\$0.65	\$0.60
2.....	1.08	1.09	1.11	B.....	.55	.55	.55
3.....	.95	.97	.96	C.....	.47	.46	.47
4.....	.78	.82	.86	D.....	.41	.39	.41
5.....	.60	.63	.65	E.....	.34	.32	.34

Milfay, Okla., is 472 miles and Chickasha 584 miles distant from St. Louis, and these points represent, approximately, the two extremes on the Frisco which take the rates mentioned. The rates to these points are entirely uninfluenced by water competition. In comparing rates to Shreveport and Texarkana with those to Milfay and Chickasha it must be remembered that the short-line mileage, which complainants claim should govern, is 490 miles to Texarkana and 562 miles to Shreveport; while the mileage via Thebes, which defendants assert is the correct route, is 526 and 589 miles, respectively. The above table shows that for the last three classes Shreveport rates are higher than those to Milfay and Chickasha, while Texarkana rates are higher on classes 2, 4, 5, A, C, D, and E; that class-B rate is the same to all points, and that on classes 1, 2, 3, 4, and 5, Shreveport rates are lower. Texarkana rates are lower than those to Milfay and Chickasha on classes 1 and 3 only.

Another comparison which we made of rates, per 100 pounds, from Memphis to Shreveport and Texarkana with those from Memphis to Howe and Red Oak, Okla., is as follows:

CLASS RATES FROM MEMPHIS.

Class.	To Shreveport.	To Red Oak.	To Texarkana.	To Howe.	Class.	To Shreveport.	To Red Oak.	To Texarkana.	To Howe.
1.....	\$1.15	\$1.03	\$1.17	\$1.00	A.....	\$0.58	\$0.45	\$0.62	\$0.41
2.....	.98	.85	1.01	.85	B.....	.50	.35	.50	.34
3.....	.87	.68	.88	.65	C.....	.42	.28	.42	.29
4.....	.71	.52	.79	.49	D.....	.36	.24	.36	.27
5.....	.55	.42	.60	.39	E.....	.29	.20	.29	.23

Howe, Okla., is 295 miles and Red Oak, Okla., 322 miles from Memphis, and these distances are approximately the same as those from Memphis to Texarkana and Shreveport, respectively. The table shows that the rates from Memphis to Shreveport and Texarkana on all classes are considerably higher than rates to the Oklahoma points designated.

The class rates from Kansas City to the Dallas-Fort Worth group are the same as those from Kansas City to Texarkana. The average distance to points in this group is approximately 645 miles, 157 miles in excess of the distance from Kansas City to Texarkana and 85 miles in excess of the distance from Kansas City to Shreveport.

In view of the history of class rates to Shreveport and Texarkana and the rate comparisons we have made, and upon consideration of all the facts and circumstances disclosed by the testimony, it is our opinion that the class rates from St. Louis, Kansas City, Memphis, and defined territories to Texarkana should not exceed those contemporaneously maintained from the same points of origin to Shreveport, La. Texarkana rates should be regarded as maximum rates to all points intermediate via the direct lines.

Next the commodity rates from the points in question to Texarkana and Shreveport will be considered. Complainants name a list of over 200 commodities on which rates to Shreveport are lower than to Texarkana and allege that upon these commodities Shreveport rates should be the maximum rates to Texarkana. On some of the commodities specified class rates apply to Texarkana and commodity rates to Shreveport. On others commodity rates are published to both points. In the former case the differentials against Texarkana vary from 1 to 61 cents per 100 pounds and in the latter from 0 to 62 cents.

Among the commodity rates named in complainants' petition there are included a number of proportional rates from East St. Louis applicable on traffic coming from points in seaboard territory. Upon the commodities listed no proportional rates are published to Texarkana, and it was explained by the intervener that the proportional rates from East St. Louis to Shreveport were published in order to allow the routes via the upper Mississippi River crossings to participate in traffic from the seaboard which would otherwise move through the lower crossings. The rates via the lower crossings from points of origin in seaboard territory to Texarkana are much higher than those to Shreveport. This Shreveport rate is met by proportionals from the upper crossings. It seems proper that defendants serving the upper crossings should be allowed to participate in traffic from eastern seaboard territory to Shreveport in this manner.

On behalf of the intervener a list of commodities other than those mentioned in complainants' petition was filed which showed the same rates to Texarkana as to Shreveport on 24 commodities and lower rates on 72 commodities. Another exhibit filed by the intervener shows that 102 of the commodity rates to Shreveport mentioned in complainants' petition are no lower than the actual combination of locals to or from Vicksburg or New Orleans. We have

made a comparison of commodity rates from St. Louis and defined territories to Shreveport and Texarkana with rates from the same points of origin to Milfay and Chickasha, Okla., and this shows that in nearly every instance the rates in effect to both Texarkana and Shreveport are lower than those maintained to the Oklahoma points. It appears that the direct lines to Shreveport have depressed their rates to meet the combinations through the lower Mississippi River crossings. It is evident that as to these commodities the routes via the lower Mississippi River crossings make the rates to Shreveport, and consequently the direct lines from St. Louis to Shreveport can not be required to raise their rates in order to place Texarkana upon the same basis as Shreveport.

Extensive rate comparisons were made by defendants to show the effect upon rates to Texas points of a reduction of the Texarkana rates to the Shreveport basis. It is shown that the resulting combination of rates over Texarkana to Texas points will, on many commodities, cut below the present through rates for substantial distances. For instance, on candy in carloads the combination over Texarkana will make lower than the present through commodity rates to Texas points within 176 miles of Texarkana; on cheese, carloads, to points within 155 miles; glass bottles, 173 miles; angle, band, and bar iron, 150 miles; machinery, 119 miles; matches, 155 miles; paints, 151 miles; and so on. On some other commodities the cut is not so extensive. It should be noted, however, that as a general rule commodity rates to Texas points are a smaller percentage below the corresponding class rates than those to Texarkana and Shreveport. Defendants also call attention to the cut in rates to points between St. Louis, Memphis, and Kansas City and Texarkana which will result from a reduction in rates at that point and to its effect upon rates to Oklahoma points.

On the other hand, the present great disparity to Texarkana and Shreveport which exists in rates on many commodities should not be permitted. In *Planters Gin & Compress Co. v. F. & M. V. R. R. Co.*, 16 I. C. C., 131, 133, the Commission used the following language:

It is well established that water competition at a given point may render the circumstances substantially dissimilar and justify a discrimination against points where such competition is not controlling. It is to be observed, however, that such dissimilarity of circumstances does not relieve the carrier altogether from the restraint of the third section. In the case of *Louisville & Nashville R. R. Co. v. Behlmer*, 175 U. S., 648, the court says:

"It follows that whilst the carrier may take into consideration the existence of competition as the producing cause of dissimilar circumstances and conditions, his right to do so is governed by the following principles: First, the absolute command of the statute that all rates shall be just and reasonable and that no undue discrimination be brought about, though, in the nature of things,

this latter consideration may in many cases be involved in the determination of whether competition was such as created a substantial dissimilarity of condition; second, that the competition relied upon be not artificial or merely conjectural, but material and substantial, and thereby operating on the question of traffic and rate making, the right in any event to be only enjoyed with a due regard to the interest of the public, and giving full weight to the benefits to be conferred on the place from whence the traffic moved as well as those to be derived by the locality to which it is to be delivered."

If, therefore, water competition at a given point compels a carrier to discriminate in rates against a point not so favorably situated, the amount of the discrimination must not be greater than the dissimilarity of circumstances demand. *Marten v. L. & N. R. R. Co.*, 9 I. C. C., 581.

Upon consideration of all the facts and circumstances disclosed with regard to commodity rates to the two points in question we are of the opinion that rates to Texarkana upon commodities which to Shreveport take rates made on the lower Mississippi crossings should not exceed those to the latter city by more than a reasonable amount. In fixing this amount it should be borne in mind that the distance to Texarkana via the rate-making routes through the lower crossings is 72 miles in excess of the distance via those routes to Shreveport. Accordingly we believe that 6 cents per 100 pounds is the maximum difference which should in any case be permitted, and we recognize this amount not as a fixed differential but merely as a maximum.

This is in line with our recent decision in *Board of Trade of Carrollton, Ga., v. C. of G. Ry. Co.*, 28 I. C. C., 154, 165, where we said:

\* \* \* in the making of joint through rates on long-distance traffic to local or noncompetitive points, the differentials above the rates to the basing points should bear some reasonable relation to the total distances involved.

At present upon many commodities the differential against Texarkana is probably not so great. This determination applies to rates which make through the lower crossings. As to commodity rates which make via the direct lines to Texarkana and Shreveport, we see no reason why the rates to the former point should exceed those contemporaneously maintained to the latter.

It is evident, however, that a further revision in rates is necessary to properly adjust the entire situation. In the discussion of class rates reference was made to the fact that the east and west lines which operate from the lower Mississippi crossings to Shreveport maintain rates to points intermediate which are as much as 40 per cent above the rates to the Shreveport group. This also holds true with reference to commodity rates on traffic from New Orleans and Vicksburg, from seaboard territory via the Gulf lines, and from St. Louis and defined territories. These facts suggest a readjustment of rates which make through and from the lower Mississippi River crossings to the

Shreveport group. This is not before us in this proceeding, but we wish to call attention to it at this time, because the rates from the upper Mississippi River crossings to the Shreveport group would seem in a large measure to be dependent upon the rate adjustment from the lower crossings. There is no doubt that the rates from the lower Mississippi River crossings to the Shreveport group were originally influenced by active water competition. The extent to which potential water competition should be recognized at the present time is not clear from the record, but the great difference between the rates from lower Mississippi crossings to the Shreveport group and those to points intermediate seems to be unjustifiable. While carriers may properly meet water competition, the maintenance of a lower rate to one point than to other points which are intermediate can not be justified on the ground that it is necessary to suppress water competition.

The order in this case will be confined to class rates in accordance with the determination expressed above. Carriers will be expected to revise their commodity rates in accordance with the suggestions made herein. If this is not done satisfactorily within a reasonable time, complainants may again bring it to our attention for the making of an appropriate order.

281. C. C.

No. 1277.  
CARL EICHENBERG  
v.  
SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted October 24, 1913. Decided December 8, 1913.*

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Upon the original hearing of this case the Commission held that the complainant had been unlawfully discriminated against by the defendants in the matter of certain dock privileges at Galveston, Tex. Complainant now claims reparation in the sum of \$48,341.54; *Held*, That complainant is entitled to recover the admitted per ton advantage of 40 cents per ton on the 800 tons of cottonseed meal and cake shown to have been shipped over defendants' wharves.

*Marsene Johnson and George G. Clough* for complainant.

*James G. Wilson and Baker, Botts, Parker & Garwood* for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

Defendants leased to E. H. Young, a shipper of cottonseed products from the port of Galveston, Tex., a portion of their wharves in that city for his exclusive use in storing and handling cottonseed meal and cake, while contemporaneously such privilege was not accorded other shippers. They also failed to exact from Young the payment of wharfage charges while at the same time exacting such charges from other shippers. These practices were found by this Commission to unduly prefer Young and to unduly prejudice other shippers; *Eichenberg v. Southern Pacific Co.*, 14 I. C. C., 250, decided June 24, 1908. The Commission's finding in that case was upheld by the Supreme Court on February 20, 1911, 219 U. S., 498. There was no evidence in the record then before the Commission upon which an award of reparation could be based and complainant was given leave to file a bill of particulars setting forth the damages he sustained by reason of the preferential treatment accorded Young. Such a bill has been filed, hearing thereon held, and the only matter for determination here is the award of damages, if any, to be made complainant.

In his bill of particulars complainant sets forth claims of damage for the following items and amounts, respectively:



*Recapitulation of Losses.*

Merchandise account:	Debit.	Credit.	Loss.
Cottonseed meal-----	\$597, 080. 41	\$590, 563. 20	
Cottonseed cake-----	23, 790. 18	24, 146. 05	
	620, 820. 59	614, 709. 25	\$6, 111. 34
Profit and loss account-----	2, 384. 66	18. 42	2, 366. 24
Expense account-----	18, 140. 19	32. 88	18, 107. 36
Interest account-----	4, 235. 10	180. 26	4, 104. 84
Total losses-----			30, 689. 78
An arbitrary allowance of 79 cents per ton on 22,344 tons of cottonseed meal and cake handled during the period complained of-----			17, 651. 76
Grand total of damages claimed, and for which an award is prayed-----			48, 341. 54

The claim here is for reparation for losses sustained during a period of two years prior to January 1, 1907, but it appears from the record that the discriminatory contract upon which is based the application for reparation did not become effective until July 1, 1905, so that any recovery would be limited to the period in issue subsequent to that date.

Complainant's claim for reparation on account of merchandise losses, expense accounts, interest, etc., aggregating \$30,689.78, is predicated upon the decision of the Commission in *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, 23 I. C. C., 186.

In refutation of this claim it is urged that the damages sought to be recovered are speculative and remote; that the complainant has offered no direct evidence to prove that the losses which his business sustained during the period in question were the proximate result of the discriminatory contract. Such evidence as he offers from which that inference might be drawn is discounted by other evidence in the nature of admissions showing that such losses were actually due to other causes.

In the original hearing, complainant testified that he began losing money in 1904, and it appears from the record that for the period of six months before the discriminatory contract became effective he was losing an average of 19 cents per ton on his cottonseed business. In his testimony he also admitted having written to his agents in Europe, blaming them for the losses he had sustained, and in one letter addressed to a brother in Europe he stated that if he had received the proper information from him concerning market conditions abroad he would have made a fortune during the period in issue.

It is evident from the record that the business in which complainant was engaged was speculative in the highest degree. From his own testimony it appears that in some years his profits were as much as \$90,000, while in other years his business showed a loss.

It further appears that complainant during this period was engaged in other transactions than his cottonseed meal and cake business; that he was acting as cotton factor and rice broker, and that he was also speculating in cotton futures. The items of expense and loss, as set out in his bill of particulars, include his losses and expenses incident to his other enterprises.

Under the item of expense complainant has included during this period a salary charge of something over \$5,000 per year for two years, as well as the expenses of a trip to Europe. He has also included therein such items as premiums for life insurance, wedding presents, subscriptions to public movements, etc., none of which has the remotest significance as an element of damage arising out of the contract involved.

Complainant claims \$4,104.84 as interest expended in the prosecution of his business for this period. He offers no proof, however, that this amount was expended solely as an incident to his cottonseed meal and cake business, but the inference is warranted that it includes interest on money used in other enterprises. The remainder of the claim for reparation is based upon the difference between the cost per ton paid by Young under the contract and that paid by the complainant as wharfage and other direct charges incident to the handling of cottonseed meal and cake. This is, of course, a proper item for consideration in the appraisal of the damages sustained, but only in so far as it affects the tonnage in cottonseed meal and cake actually exported by complainant between July 1, 1905, and January 1, 1907. This item is also subject to a further limitation to the volume of traffic actually exported over the wharves of the defendant companies, since, obviously, those companies should not be charged with losses sustained by complainant in connection with his exportations over the docks of their competitors, particularly in the absence of a definite showing by complainant that he *could not* have used their facilities on the basis available to all other shippers with the exception of Young.

A vast amount of testimony was offered by complainant with respect to the volume of his transactions in cottonseed meal and cake, but his accounts as kept fail to differentiate between export shipments and consignments handled locally and between actual transactions and paper transfers, and he admitted in his testimony that the details of many of his negotiations were merely carried "in his head."

Stripped of indeterminate items, however, the record shows affirmatively that complainant exported 1,440 tons of cottonseed meal and cake between July 1, 1905, and January 1, 1907. Of this amount he claims to have shipped from 100 to 300 tons over the docks of the defendant company; and inasmuch as the defendants, whose books

might have disclosed the actual amount involved, made no attempt at refutation of this estimate, the maximum tonnage claimed—that is, 300 tons—may be taken as the proper basis for reparation. The question then resolves itself into a determination of the amount per ton which should be refunded to complainant as representing the difference enjoyed by Young to his detriment.

Complainant, in his testimony, fixes this difference at 79 cents per ton, this approximation being based upon his estimate of what his saving might have been if he had operated on the scale on which Young operated. Thus, while his books did not show, and while he offered no proof to show, what amounts he had paid by way of unloading charges during the period involved, he suggested in his testimony that Young had paid about 4 cents per ton for unloading, while the railroad companies had absorbed from the freight charges on account of this item  $12\frac{1}{2}$  cents per ton, thereby discriminating in favor of Young to the extent of  $8\frac{1}{2}$  cents per ton. Stevedoring he figures as an advantage of from  $12\frac{1}{2}$  to 25 cents per ton, but he has not shown what amount, if any, he paid for stevedoring during this period. He also enumerates among the advantages enjoyed by Young the benefits accruing from shipments of full cargoes, as well as from ship's commission and dispatch money, cheap electrical power, etc., as constituting the balance of his estimate of 79 cents, yet he makes no attempt to show that any of these items were incidental to his own business.

It appears from the record that the building in which Young conducted his business cost over \$60,000, exclusive of docks; that it was equipped with expensive machinery; that he had in his service about 200 employees; that he paid a substantial rental for the premises in which he carried on his business; and that a large credit was necessary to carry on operations on the scale on which he operated. On the other hand, it nowhere appears that complainant maintained any establishment other than his office; that he employed no laborers; and that he had no investment in machinery or other plant facilities.

In the final analysis, therefore, complainant has afforded no tenable basis upon which to predicate a satisfactory estimate of the losses he sustained by reason of the discriminatory contract.

From the foregoing it is apparent that the decision of the Commission in *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, *supra*, has no application here. There the annual output of each mine was a known quantity. The proper apportionment of available cars was a definitely determinable figure. The number of cars actually furnished the complaining mines was known exactly. The cost of production was a definite sum; the market price was a matter of record,

and this market price would not have fluctuated, because no more coal would have been put on the market under a proper distribution of cars than was put on the market under the improper distribution. With a basis of these certain and fixed amounts an absolute calculation of damage was readily determinable.

We have no such basis here, and there is no way to calculate what would have been the extent of complainant's business if this discriminatory contract had not been made, and there is no way to determine that such business would have been conducted at a profit, or what that profit would have been.

From the record as a whole, however, it is evident that complainant has actually suffered some pecuniary damage by reason of the contract in question, and had he shown his various transactions, in such a way as to establish definitely the exact proportion of his loss, reparation would be awarded on the basis of his actual damages as thus exhibited.

In the absence of such a showing, however, we may refer only to the stipulation of facts, as agreed upon by counsel for both parties, which was filed in the proceeding before the Supreme Court, *supra*, a copy of which now forms a part of the record before the Commission, in which it is conceded that the benefits accruing to Young by reason of his contract gave him an advantage of 30 to 40 cents per ton over those of his competitors not similarly favored.

Irrespective of the vicious features of the contract heretofore condemned, it is not within the province of this Commission to grant complainant exemplary damages, but it is believed that an award of 40 cents per ton, as to the cottonseed meal and cake actually exported by him over the docks of the defendant companies during the period covered by this complaint, will effect substantial justice.

It is realized that an award of this nature is to a certain extent a departure from the usual rule requiring a complainant to prove with certainty the quantum of his claim, but the fact that the defendants have conceded that the complainant in this action paid from 30 to 40 cents per ton more than the favored shipper under the contract paid for a similar service would seem to place it within the category of excepted cases.

The argument of defendants' counsel that complainant has failed to refute the inference that the claim in issue, if property at all, is the property of the Gulf Port Trading Company is not regarded as persuasive.

Reparation is therefore awarded to the complainant in the sum of \$120, representing a difference of 40 cents per ton on 300 tons as hereinabove set forth, and an order will be entered accordingly.

28 I. C. C.

No. 5396.

ALTON BOARD OF TRADE

v.

CHICAGO & ALTON RAILROAD COMPANY ET AL.

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FOURTH SECTION APPLICATION NO. 1952 OF THE  
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

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*Submitted November 5, 1913. Decided December 8, 1913.*

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1. The present adjustment of class rates from East St. Louis to Henderson and Owensboro, Ky., not found to be discriminatory as against the rates from Alton, Ill., to the same points.
2. Upon consideration of the application of the Louisville & Nashville Railroad Company for permission to continue lower class rates from Alton, Ill., to Louisville, Ky., than rates maintained on like traffic to Henderson and Owensboro and intermediate points; *Held*, That the rates from Alton to Henderson and Owensboro and intermediate stations west thereof should not exceed the rates concurrently applicable from the same point of origin to Louisville.

*A. W. Sherwood and W. H. Joesting* for complainant.

*A. P. Humburg* for Illinois Central Railroad Company.

*R. A. Miller* for Louisville, Henderson & St. Louis Railway Company.

*Wm. A. Northcutt and Edward D. Mohr* for Louisville & Nashville Railroad Company.

*D. P. Cornell* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

**McCHORD**, *Commissioner*:

The Alton Board of Trade complains of the class rates from Alton, Ill., to Henderson and Owensboro, Ky., because they exceed those contemporaneously maintained from East St. Louis to the same destinations, contending that as both of these originating points are similarly situated with respect to natural as well as commercial advantages, it is unduly prejudicial and discriminatory to grant East St. Louis a lower scale of rates.

The class rates to Henderson and Owensboro from Alton in cents per 100 pounds are:

Class----	1	2	3	4	5	6
Rate ----	43	37½	30	21½	16	13

From East St. Louis:

Rate ----	41	34½	25½	17½	15	12
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From Alton and East St. Louis to Louisville:

Rate ----	41	34½	25½	17½	15	12
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There is also involved that portion of Fourth Section Application No. 1952 of the Louisville & Nashville Railroad which seeks authority to continue lower class rates to Louisville, Ky., than rates concurrently in effect on like traffic to Henderson and Owensboro and intermediate stations.

The complaint contains an allegation as to violation of the fourth section, but it appears that this is more in the nature of a charge of undue discrimination as prohibited by section 3 of the act to regulate commerce, for the reason, as stated by the complainant, that the injury to Alton is not in the fact that the fourth section is violated at all, but because its provisions are observed in making rates from East St. Louis and not observed in making rates from Alton.

Crossing the Mississippi River at St. Louis, Mo., East St. Louis, Ill., is reached. Extending thence northwardly into what is known as the "American bottoms" a large manufacturing district has been established and is constantly expanding. Immediately north of East St. Louis is Venice, Ill. Farther north are Madison and Granite City, the latter town being about 6 miles distant from East St. Louis and constituting the northern boundary of the present East St. Louis switching district, from which the East St. Louis rates to Henderson and Owensboro apply. North of this district are located the towns of Nameoki and Mitchell, immediately north of which is the Alton district, consisting of Wood River, Federal, Hartford, East Alton, and Alton, the last-named point being about 21 miles from East St. Louis, and likewise upon the east bank of the Mississippi River. Hartford, the southernmost point in the Alton district, is 8 or 9 miles from Granite City, the northernmost point in the East St. Louis switching district.

There is frequent reference made in the record to the so-called "St. Louis industrial district," or the "St. Louis east side manufacturing district," as including all towns between St. Louis and Alton; but such an extensive district seems never to have been recognized by the railroads as constituting the St. Louis switching or manufacturing limits, the latter apparently extending no farther north than Granite City.

In the early days of commercial and transportation activities Alton was an important river town. As time passed it became the southern terminus of the Chicago & Alton Railroad, which later was extended on down to East St. Louis. For a time the industrial activities of Alton and East St. Louis seemed to be on an equal basis, but with the growing up of St. Louis and the incident expansion of a large city Alton appears to have dropped out of the manufacturing race. Later a bridge spanning the Mississippi at Alton was constructed, which brought about an industrial awakening, so that to-day there are many and varied manufactories and commercial enterprises located in and around Alton, the result being that keen competition exists between the Alton and East St. Louis districts both with respect to the securing of new industries and to the sale and transportation of the products of those already established. The grouping here contended for is not recognized within the state of Illinois and to northern points where rates are made with respect to the Illinois scale of class rates Alton has the advantage. From the standpoint of Alton it is quite desirable to have its rates to the south on a parity with those from East St. Louis, and to achieve that end it expresses a willingness to forego its advantage on traffic moving northward and to have its northbound rates equalized with the rates from East St. Louis northward. In other words, it complains not of the highness of its rates or the lowness of the East St. Louis rates. It simply asks that it be considered a part of the St. Louis manufacturing district, and as such entitled to St. Louis rates in every direction, especially to points outside of a radius of 100 or 150 miles from the point of origin, conceding that to points within such radius to the south East St. Louis is entitled to a lower rate and asserting that on traffic moving northward within such radius it should have the benefit of its nearer location. The record indicates the movement of freight between Alton and Owensboro and Henderson has consisted mainly of bottles, which commodity is subject to fifth class. In this trade Alton's principal competition is at East St. Louis, though competitors are also located at Cincinnati, Louisville, and points in the Indiana gas belt. Alton's rate is 1 cent over East St. Louis, the difference in distance being 21 miles.

Rates from Alton to many points south of the Ohio River have for some years been the same as rates from East St. Louis. Alton and East St. Louis were for six or more years on the same basis to Henderson and Owensboro, this condition continuing until 1909, when the Alton rates were increased because, contends complainant, of a dispute between the initial and delivering lines as to divisions. Defendants, however, insist that the question of divisions did not enter

into the advancing of the rates, asserting that the additional service performed, involving one or more lines in the haul from Alton to East St. Louis, justified the charging of the slightly higher rate.

Since neither the reasonableness of the St. Louis or Alton scale of rates is in dispute, the question for determination is one of relation, *i. e.*, whether the location, conditions, and surroundings of the two cities are so similar as to make unduly discriminatory the charging of a higher rate from either.

The bulk of traffic from Alton to Henderson and Owensboro moves via the originating line to East St. Louis, and thence over the Louisville & Nashville to Henderson, and from there over the Louisville, Henderson & St. Louis to Owensboro, this constituting the short route, and requiring a haul over three and sometimes four lines, as none of the roads that reach Alton serve Henderson and Owensboro. Traffic from East St. Louis moves via the Louisville & Nashville and the Louisville, Henderson & St. Louis, constituting the short route.

While the fact that the carriers have for some time maintained the same rates from Alton to certain points south of the Ohio River as from East St. Louis is entitled to some weight, it is by no means conclusive. Numerous and varied might be the considerations which produce such a situation. The carriers contend that where the rates are the same from both points it is due to the fact that they make on combination on a base point to which the rates have been made the same from both points by lines other than the terminal lines at Henderson and Owensboro; whereas the Henderson and Owensboro rates are made differentials over Evansville and not on combination. But whatever the reason, when we consider the dissimilarity of conditions at East St. Louis and Alton, we do not think under the circumstances that the switching limits of East St. Louis should be extended so far as to include the Alton district. Especially is this true when we bring to mind its distance from East St. Louis and the fact that traffic for Henderson and Owensboro always necessitates the services of one and sometimes two additional lines to get it into East St. Louis, and with which lines divisions of the through rate must be made.

It is our opinion that rates from Alton to southern points may properly be made differentials over the rates from East St. Louis, and we see no reason why the present differentials should be considered too great. However, the relation of the rates from Alton to Henderson and Owensboro as compared with the rates from the same point of origin to Louisville, a more distant point, involves a question under the fourth section which should be disposed of upon its own merits.

As the Louisville & Nashville has no direct line from Alton to Louisville, it participates in that traffic by receiving it from origi-



nating lines at East St. Louis, moving it via Evansville, Henderson, and Owensboro in connection with the Louisville, Henderson & St. Louis Railway to Louisville. The short line from Alton to Louisville is via the Chicago, Peoria & St. Louis Railway and Southern Railway, the distance being 292 miles. From East St. Louis the Southern Railway, 271 miles, is the short-line route. Via the Louisville & Nashville and Louisville, Henderson & St. Louis Railway the distances from Alton and East St. Louis to Louisville are 340 and 319 miles, respectively. Via the circuitous line of the Louisville & Nashville the distance from East St. Louis to Louisville is 435 miles. The Alton-Louisville rate was established by other lines than the Louisville & Nashville, and has been for a long time maintained. The route via the Louisville & Nashville is somewhat circuitous, but this carrier meets the rate of the Southern Railway, the short line to Louisville, in order to secure part of the traffic. Thus its maintenance of the lower rate to Louisville is brought about by competitive conditions. It would therefore seem that there is justification for carrying lower rates from Alton to Louisville than the rates concurrently applicable on like traffic to certain of the intermediate stations, but it appears that the Louisville & Nashville and its connections are carrying the lower rates to Louisville for a haul 340 miles in length, the Southern Railway and its connections have the same rates for a distance of 292 miles, while the rates to the intermediate points, Henderson and Owensboro, at distances from Alton of 196 and 226 miles are higher. The rates to the intermediate points named do not bear that reasonable relationship to the rates to the long-distance point, as made by the short line, which they should. We are of the opinion that the rates from Alton to Henderson and Owensboro and intermediate stations west thereof should not exceed the rates concurrently applicable from the same point of origin to Louisville, Ky.

On this record the Commission finds that the present adjustment of class rates from East St. Louis, Ill., to Henderson and Owensboro, Ky., are not unjustly discriminatory as against the rates from Alton, Ill., but an order will be entered denying that portion of Fourth Section Application No. 1952, which seeks authority to continue lower class rates from Alton to Louisville than rates concurrently in effect from Alton to Henderson, Owensboro, and points west thereof.

No. 4703.

J. E. BRYANT COMPANY

v.

FORT WORTH & DENVER CITY RAILWAY COMPANY  
ET AL.

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*Submitted September 18, 1912. Decided October 7, 1913.*

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1. Rate of 81 cents per 100 pounds now in effect for the transportation of bananas in carloads from New Orleans, La., to Amarillo, Tex., not found unreasonable or unduly prejudicial.
2. Defendants' tariffs effective from May 15, 1911, to February 15, 1912, found to have provided a rate of 67 cents per 100 pounds for the transportation of bananas in carloads from New Orleans, La., to Amarillo, Tex. Reparation awarded on account of overcharges.
3. Charges collected on shipments of coconuts in straight carloads, or mixed carloads with bananas, found to have been unreasonable to the extent they exceeded charges based on rate of 81 cents per 100 pounds. Reparation awarded.

*J. E. Bryant and E. L. Higinbotham* for complainant.

*Spoonts, Thompson & Barwise and Turner & Wharton* for Fort Worth & Denver City Railway Company.

*Henry G. Herbel, Fred G. Wright, and C. Schonfelder* for Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale fruit and produce business at Amarillo, Tex. By complaint, filed February 26, 1912, it alleges that rates charged by defendants for the transportation of numerous carload shipments of bananas and coconuts from New Orleans, La., to Amarillo in 1910, 1911, and 1912 were unreasonable and unjustly discriminatory. Reparation is asked. The claim was first filed with the Commission July 6, 1911.

At the hearing complainant presented an amended complaint in which it is alleged that rates charged on the shipments in question were unreasonable to the extent that they exceeded rates in effect from New Orleans to Texas common points, and that from May 15, 1911, to February 15, 1912, the published carload rate for transportation of bananas from New Orleans to Amarillo was 67 cents per 100 pounds. Reparation is asked on the basis of the allegations in the amended complaint. No objection was made by defendants to the filing and consideration of the amendment.

Between February 25, 1910, and February 15, 1912, complainant made numerous shipments of bananas in straight carloads, and coconuts in straight carloads and in mixed carloads with bananas from New Orleans to Amarillo. On the shipments of bananas previous to August 7, 1911, charges were collected at the rate of 86 cents per 100 pounds, and after that date charges were collected at the rate of 81 cents per 100 pounds. During the whole of said period a rate of 86 cents was charged on coconuts in straight carloads or in mixed carloads with bananas.

Previous to August 7, 1911, Southwestern lines tariff I. C. C. No. 827 contained a commodity rate of 86 cents per 100 pounds on bananas, minimum carload weight 20,000 pounds, applicable to shipments from New Orleans to Amarillo. Subsequently the rate was reduced to 81 cents. The items containing the rates in question in these tariffs were subject to the alternative application of lower rates if such were provided in other sections of the tariffs. There is no question of the lawful incorporation of the commodity items, but complainant contends that section 1 of tariff I. C. C. No. 827, taken in connection with classification exceptions appearing on page 87-B thereof, and section 1 of tariff I. C. C. No. 873, with similar classification exceptions appearing on page 95 thereof, provided a rate on bananas of 4 cents higher than class C, or 67 cents per 100 pounds, and that under the alternative provisions this was the lawful rate from May 15, 1911, to February 15, 1912. Defendants deny that the rate of 67 cents was applicable to shipments of bananas during this period. The interpretation of the same tariffs, with the exception that the points of destination involved were Dallas and Fort Worth, Tex., was before the Commission in *Swanson v. T. & P. Ry. Co.*, Unreported Opinion No. A-166. In that case we held that the tariffs named a rate of 4 cents higher than the class-C rate on bananas in carloads to the points therein involved. Following the decision in that case, we are of opinion and find that the tariffs in effect during the period from May 15, 1911, to February 15, 1912, provided a rate of 67 cents per 100 pounds on bananas in carloads from New Orleans to Amarillo via defendants' lines, and that any rate charged in excess thereof was unlawful.

For a number of years prior to August 7, 1911, defendants published a commodity rate of 86 cents on bananas in straight carloads when shipped from New Orleans to Amarillo, minimum weight 20,000 pounds, and on coconuts in straight carloads or in mixed carloads with bananas, minimum weight 24,000 pounds. On the latter date the commodity rate on bananas was reduced to 81 cents, but no reduction was made in the rate on coconuts in straight or mixed carloads. While, as we have found, there was a rate of 4 cents higher

than the class-C rate, or 67 cents, in effect contemporaneously with the commodity rate of 81 cents on bananas from May 15, 1911, to February 15, 1912, the cancellation of the 67-cent rate on the latter date left in effect the commodity rate of 81 cents. Defendants admit that the rates on bananas and coconuts in mixed carloads and on coconuts in straight carloads should be no higher than on bananas in straight carloads.

Quanah, Tex., is a point on the line of the Fort Worth and Denver City Railway, 144 miles southeast of Amarillo. It is in Texas common point territory. Complainant alleges that the 72-cent rate to Quanah is unduly prejudicial to receivers of bananas and coconuts at Amarillo. There is very little evidence in the record with respect to the reasonableness of the rate. Comparisons of the rates from New Orleans to Amarillo with rates from New Orleans to Trinidad, Colo.; rates from Galveston, Tex., to numerous points in the middle west; and rates from New Orleans to points in Texas common point territory are made with a view to showing that the rate in question is unreasonable. This evidence standing alone is not convincing.

Defendants contend that Amarillo's disadvantages are due to its location rather than to the rates charged. It is said that the territory west of Amarillo is sparsely settled, and therefore the jobbers at that point must sell in the territory south and east thereof; that the curtailment of complainant's sales in this territory is due to the establishment of competing jobbing houses at Quanah and Sweetwater, Tex.; that this disadvantage is one which the carriers could not eliminate without unduly discriminating against the latter points, which are more advantageously situated. Defendants contend that an effort was made to equalize the rates in this territory by restricting the Texas common point territory, but that the tariffs of the defendants were suspended by the Commission (Investigation and Suspension Dockets, Nos. 116 and 116-A.) At the time this case was heard the case involving suspension of the rates restricting the Texas common point territory had not been decided, and it was the contention of the defendants that the effect of the suspended tariffs, if approved by the Commission, would give Amarillo the equality in rates which it sought. Since that time the case has been decided adversely to defendants, *Texas Common Point case*, 26 I. C. C., 528. In that case, the Amarillo Chamber of Commerce filed an intervening petition praying for common point rates. The Commission refused to grant this petition. It was stated in that decision, page 538, that—

Viewed from that standpoint there can be no doubt that we would not hesitate on this record to put Amarillo on a parity with Quanah, for example, on traffic moving from such a distance as St. Louis and the defined territories, if

those two points could be considered by themselves and wholly apart from other points in Texas. But the rights of Amarillo can not be considered without giving some heed to the conditions that surround it. Quanah is in the common point territory, an already unusually extensive rate group which on strong grounds we have been and still are reluctant to enlarge. Such rate structures must have boundaries somewhere. Their limits must be prescribed and definitely located; and wherever the line may be drawn the point next beyond it is necessarily on a higher rate level. In some cases the increase is harshly abrupt. This is the plight of Amarillo. But now to put it in the favored territory, not improbably would soon result in making the common point area coterminous with the boundary lines of the state. This we think should be avoided and we are disinclined to take any step tending toward such a result. On the contrary there are substantial reasons, although not developed on this record, for thinking that the present common point territory, so far from being enlarged, could well be broken up into several different zones or groups, and this some day may be found to be necessary.

The reasons urged by complainant for the extension to Amarillo of the rates on bananas and coconuts from New Orleans to Texas common points, would apply with equal force to all commodities of a similar character. In the case last cited the Commission refused to extend common point rates to Amarillo, and there is nothing in this record which convinces us that bananas and coconuts should be excepted from that ruling.

On this record we do not find that the rate of 81 cents on bananas in carloads is unreasonable or unduly prejudicial to Amarillo. It appears to be fairly in line with rates on other commodities from New Orleans. The reduction of the rate from 86 to 81 cents appears to have been a voluntary act upon the part of the carriers, and no reparation should be awarded on account of such reduction. Complainant contends that as to shipments prior to May 15, 1911, upon which the 86-cent rate was collected, it is entitled to reparation because the rate charged exceeded the sum of the intermediate rates. The rate at the time from New Orleans to Houston, Tex., was 85 cents, and from Houston to Amarillo 46 cents, making a combination of 81 cents. But none of complainant's shipments moved via the route over which said intermediate rates applied. Its shipments moved via the Texas & Pacific to Fort Worth, Tex., and thence via the Fort Worth & Denver City; and via that route there was no combination of intermediate rates aggregating less than the joint through rate. No reparation may therefore properly be awarded on the shipments in question.

As stated, the former commodity rate of 86 cents on bananas in straight carloads was reduced to 81 cents, effective August 7, 1911, but no reduction was made in the rate on coconuts in straight carloads or in mixed carloads with bananas. The defendants admitted that the failure to reduce the rate on coconuts was due to error and that they should take the same rate as bananas.

We are of opinion and find that the charges collected on the shipments of coconuts in straight carloads or in mixed carloads with bananas, on or subsequent to August 7, 1911, were unreasonable to the extent that they exceeded charges which would have accrued on the basis of 81 cents per 100 pounds. An order will issue requiring the maintenance for the future of a rate on coconuts in carloads, or in mixed carloads with bananas, on shipments from New Orleans to Amarillo, that shall be no higher than the rate contemporaneously maintained on shipments of bananas in carloads from New Orleans to Amarillo.

We further find that as to shipments of bananas in straight carloads between May 15, 1911, and February 15, 1912, complainant has been damaged to the extent of the difference between the amounts paid by it and the amounts it would have paid at the lawful published rate of 67 cents per 100 pounds; and that on the shipments of coconuts in straight carloads, or mixed with bananas, on or subsequent to August 7, 1911, it has been damaged to the extent of the difference between the amounts collected and the amounts it would have paid at the rate of 81 cents per 100 pounds. On this record, however, the amount of reparation can not be determined. Complainant will be expected to prepare a statement showing as to each shipment upon which reparation is claimed the date of movement, destination, car number and initials, charges collected, and amount of reparation due under our findings herein. This statement should be submitted with freight bills covering same to defendants for verification by them. Upon receipt of statement so prepared and verified, together with paid expense bills, the Commission will take the matter up with the view to the issuance of an order of reparation.

28 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 273.

PACKING-HOUSE PRODUCTS RATING UPON TRAFFIC  
ORIGINATING AT OR DESTINED TO POINTS IN AR-  
KANSAS, LOUISIANA, AND OKLAHOMA.

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*Submitted October 15, 1913. Decided December 1, 1913.*

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It being proposed to cancel the fourth-class rating on cured meat in sacks to points in Arkansas from St. Louis and Kansas City, Mo., and a few other packing-house centers, and to establish the rating of second class, carried in western classification and applicable generally throughout the southwest, in promotion of relative equality both between packing-house centers and points of destination; *Held*, That the proposed change in classification should be permitted to become effective. Order of suspension vacated.

*Luther M. Walter, A. W. McLaren, J. A. Tapee, and E. W. Skipworth* for protestants.

*Fred. G. Wright, Martin L. Clardy, and Henry G. Herbel* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

*W. F. Dickinson and W. T. Hughes* for Chicago, Rock Island & Pacific Railway system.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

In western classification cured meats in sacks, together with certain other packing-house products, are rated second class, the exception to this rating being on that class of traffic to Arkansas points from St. Louis, Kansas City, and a few other packing-house centers. It is proposed now to cancel this exception by supplement 7 to Leland's I. C. C. No. 958 and supplement 7 to Morris' I. C. C. No. 361, and it is these tariffs providing such changes that are under review in this proceeding, they having been suspended in effective date from June 7, 1913, to April 4, 1914.

The protestants, Sulzberger & Sons Company and Morris & Company, call into question only the rating on cured meats, which is the only commodity included in the suspended items which moves in any considerable quantity to Arkansas from these points of origin. The proposed change in classification would result in an increase in rates averaging about 60 per cent according to protestants. This change, as already stated, affects cured meat only when in sacks, the fourth-class rating still being available when the commodity is packed in barrels, boxes, crates, barrels with cloth tops, or pails tightly covered.

The purpose of the proposed change, respondents assert, is to realign this traffic to the basis of the rating on similar traffic to Arkansas from packing-house centers in the southwest other than those covered in the suspended tariffs, from which, as stated, western classification rating of second class applies, and also to the basis of rating from St. Louis and Kansas City to other states in the southwest.

The Commission has recently passed upon the reasonableness of rates on packing-house products in carloads from Wichita, Oklahoma City, and certain other packing-house centers to various points in the southwest, and has made express findings as to reasonable maximum rates for application on this traffic which are embodied in a mileage scale set out in its report. *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160; 23 I. C. C., 656; and *In the Matter of Advances in Rates on Fresh Meats and Packing-House Products*, 23 I. C. C., 652. Peddler-car rates were fixed at certain percentages above the carload rates. While the complaints in those proceedings did not include St. Louis and Kansas City as points of origin, those cities were subsequently included by stipulation of the parties. There were no findings in those cases with respect to straight less-than-carload shipments, as there was no evidence as to the extent to which such rates were necessary, and that matter was therefore left for consideration by supplemental complaint. Protestants nevertheless refer to the course of action of the carriers in their realignment of rates in accordance with those findings in partial justification of their attitude in the present proceeding, pointing out that in the realignment made necessary therein there were made many increases in their carload rates to Arkansas from St. Louis and Kansas City; alleging also that the carriers have not fully complied with the requirements of those findings with respect to the establishment of peddler-car rates into Arkansas. In view of these facts they contend that the fourth-class rating on the less-than-carload shipments to Arkansas points from St. Louis and Kansas City, involved in the present proceeding, should be continued to take care of the traffic to stations to which peddler-car rates have not been so established or to which such cars are run but infrequently.

The extent to which the Commission's findings with respect to the establishment of peddler-car rates have been complied with is somewhat in dispute in this record, the carriers insisting that such rates have been established in accordance with the letter and spirit of those findings to practically all points in Arkansas except those involving three or four line hauls.

As explained, the ratings in these suspended tariffs involve the application of the regular less-than-carload rates, which are applicable to a different class of traffic from that embraced in the carload



and peddler-car shipments. If the carriers have not fully complied with the Commission's findings as to the latter rates, that matter should be brought to the attention of the Commission as a part of the other cases.

The main object of the mileage scale found by the Commission to be reasonable in the cases referred to was to secure relative equality, and by the adoption of that scale this purpose would be accomplished as to the carload and peddler-car traffic involved. Apparently the same desirable situation would be promoted with respect to less-than-carload shipments by the taking effect of the change in classification now proposed in the tariffs under suspension, by the cancellation in those tariffs of these exceptions in the southwest to the western classification rating of second class on shipments in less than carloads.

Upon full consideration of all the facts of record it is our opinion that the proposed change in classification should be allowed to become effective. The order of suspension will therefore be vacated.

28 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 249.  
OMAHA-WISCONSIN GRAIN RATES.

*Submitted September 5, 1913. Decided December 8, 1913.*

Proposed increased rates on wheat and corn from Omaha, Nebr., Council Bluffs, Iowa, and lower Missouri River cities to certain Wisconsin points on the Minneapolis, St. Paul & Sault Ste. Marie Railway found to be reasonable and order of suspension vacated.

*Edward P. Smith* for Omaha Grain Exchange.

*Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*Kenneth Taylor, A. H. Bright, and A. H. Lossow* for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

*McCHORD, Commissioner:*

The tariff under suspension increases the rates on wheat and corn from Omaha, Council Bluffs, and lower Missouri River cities to Mann, Spencer, Unity, Colby, and Abbotsford, Wis., local points on the line of the Minneapolis, St. Paul & Sault Ste. Marie Railway. Mann, a prepay station, and Spencer, 3 miles distant, are on the main line between Chicago and the twin cities. Abbotsford, 305 miles northwest of Chicago, is the farthest distant and was formerly a division point on the main line. In recent years this point, as well as Colby and Unity, have been put off the main line by means of a cut-off constructed from Spencer to Owen. Spencer, Unity, and Colby are intermediate to Mann and Abbotsford in the order named. Marshfield is a point on the main line immediately southeast of Mann, and from this point there is a branch line extending in a southwesterly direction to Greenwood, 22 miles.

Chicago, Rock Island & Pacific tariff I. C. C. No. C-9408 carries a joint rate from Omaha and lower Missouri River territory via Chicago through Abbotsford of 15½ cents on wheat and 14½ cents on corn. However, on the Greenwood branch the rate is 5 cents higher. Under supplement 3, the tariff under suspension, the stations northwest of Marshfield—Mann to Abbotsford, inclusive—are placed in the same group as the Greenwood branch points, i. e., instead of applying the Marshfield rate up to Abbotsford, the rate is made to break at the former point, the stated purpose of which is to realign the Rock Island rates with those now in effect over the Chicago &

Alton, Atchison, Topeka & Santa Fe, and Wabash systems and to conform to the grouping over the Minneapolis, St. Paul & Sault Ste. Marie on classes and commodities. The protestant in this proceeding is the Omaha Grain Exchange.

The Chicago, Burlington & Quincy carries rates of 15½ cents on wheat and 14½ cents on coarse grain from Missouri River Crossings to all points on the Green Bay & Western, which latter line extends in an easterly and westerly direction across the state of Wisconsin and traverses the territory south and east of Abbotsford. The same rates are published by the Chicago & North Western on its north and south line up to Antigo, but to this point the mileage is somewhat less than via the Soo line from Chicago to Marshfield. On the other hand, the rates here sought to be established over the Rock Island are now carried by the Chicago & Alton from Kansas City through Owen to Mann. The same rates are published by the Santa Fe and rates 1 cent less are carried by the Wabash, observing Marshfield as the rate-breaking point. Likewise the Chicago, St. Paul, Minneapolis & Omaha Railway, which runs west from Marshfield, applies to stations beyond a higher rate than to Marshfield on grain, classes, and commodities. With the exception of Mann, 3 miles from Marshfield, the Minneapolis, St. Paul & Sault Ste. Marie rates break at Marshfield.

The proportional rate on wheat from Minneapolis to Chicago is 10 cents, on coarse grain 7½ cents, and the proportional rate from Omaha to Minneapolis published by the Rock Island is 11 cents on wheat and 10 cents on corn. These rates are not applicable to intermediate points. If grain should be moved from Omaha to Minneapolis on the proportional rate, thence to Chicago on the proportional rate over the Soo line, the total rate to Chicago would be 21 cents on wheat and 17½ cents on corn. The distance from Omaha to Abbotsford via Chicago is approximately 800 miles. Via Minneapolis it is 200 or 250 miles less. A witness for the respondents testified that he knew of no operating reason why shipments should not be routed via Minneapolis, but there is no application in this proceeding for the establishment of a through rate via that route. As heretofore stated, the joint rate is made applicable via Chicago, the usual gateway for eastern business, and the present inquiry does not present a situation whereby the presumption of the unreasonableness of the through rate is raised by reason of the existence of a combination of locals lower than the through rate in effect via the route over which the joint rate applies.

During the years 1907 to 1910, inclusive, this general territory in Wisconsin, including the stations shown in the tariff under investigation, was considered as being in the Chicago rate group, and  
28 I. C. C.

than the class-C rate, or 67 cents, in effect contemporaneously with the commodity rate of 81 cents on bananas from May 15, 1911, to February 15, 1912, the cancellation of the 67-cent rate on the latter date left in effect the commodity rate of 81 cents. Defendants admit that the rates on bananas and coconuts in mixed carloads and on coconuts in straight carloads should be no higher than on bananas in straight carloads.

Quanah, Tex., is a point on the line of the Fort Worth and Denver City Railway, 144 miles southeast of Amarillo. It is in Texas common point territory. Complainant alleges that the 72-cent rate to Quanah is unduly prejudicial to receivers of bananas and coconuts at Amarillo. There is very little evidence in the record with respect to the reasonableness of the rate. Comparisons of the rates from New Orleans to Amarillo with rates from New Orleans to Trinidad, Colo.; rates from Galveston, Tex., to numerous points in the middle west; and rates from New Orleans to points in Texas common point territory are made with a view to showing that the rate in question is unreasonable. This evidence standing alone is not convincing.

Defendants contend that Amarillo's disadvantages are due to its location rather than to the rates charged. It is said that the territory west of Amarillo is sparsely settled, and therefore the jobbers at that point must sell in the territory south and east thereof; that the curtailment of complainant's sales in this territory is due to the establishment of competing jobbing houses at Quanah and Sweetwater, Tex.; that this disadvantage is one which the carriers could not eliminate without unduly discriminating against the latter points, which are more advantageously situated. Defendants contend that an effort was made to equalize the rates in this territory by restricting the Texas common point territory, but that the tariffs of the defendants were suspended by the Commission (Investigation and Suspension Dockets, Nos. 116 and 116-A.) At the time this case was heard the case involving suspension of the rates restricting the Texas common point territory had not been decided, and it was the contention of the defendants that the effect of the suspended tariffs, if approved by the Commission, would give Amarillo the equality in rates which it sought. Since that time the case has been decided adversely to defendants, *Texas Common Point case*, 26 I. C. C., 528. In that case, the Amarillo Chamber of Commerce filed an intervening petition praying for common point rates. The Commission refused to grant this petition. It was stated in that decision, page 538, that—

Viewed from that standpoint there can be no doubt that we would not hesitate on this record to put Amarillo on a parity with Quanah, for example, on traffic moving from such a distance as St. Louis and the defined territories, if

those two points could be considered by themselves and wholly apart from other points in Texas. But the rights of Amarillo can not be considered without giving some heed to the conditions that surround it. Quanah is in the common point territory, an already unusually extensive rate group which on strong grounds we have been and still are reluctant to enlarge. Such rate structures must have boundaries somewhere. Their limits must be prescribed and definitely located; and wherever the line may be drawn the point next beyond it is necessarily on a higher rate level. In some cases the increase is harshly abrupt. This is the plight of Amarillo. But now to put it in the favored territory, not improbably would soon result in making the common point area coterminous with the boundary lines of the state. This we think should be avoided and we are disinclined to take any step tending toward such a result. On the contrary there are substantial reasons, although not developed on this record, for thinking that the present common point territory, so far from being enlarged, could well be broken up into several different zones or groups, and this some day may be found to be necessary.

The reasons urged by complainant for the extension to Amarillo of the rates on bananas and coconuts from New Orleans to Texas common points, would apply with equal force to all commodities of a similar character. In the case last cited the Commission refused to extend common point rates to Amarillo, and there is nothing in this record which convinces us that bananas and coconuts should be excepted from that ruling.

On this record we do not find that the rate of 81 cents on bananas in carloads is unreasonable or unduly prejudicial to Amarillo. It appears to be fairly in line with rates on other commodities from New Orleans. The reduction of the rate from 86 to 81 cents appears to have been a voluntary act upon the part of the carriers, and no reparation should be awarded on account of such reduction. Complainant contends that as to shipments prior to May 15, 1911, upon which the 86-cent rate was collected, it is entitled to reparation because the rate charged exceeded the sum of the intermediate rates. The rate at the time from New Orleans to Houston, Tex., was 35 cents, and from Houston to Amarillo 46 cents, making a combination of 81 cents. But none of complainant's shipments moved via the route over which said intermediate rates applied. Its shipments moved via the Texas & Pacific to Fort Worth, Tex., and thence via the Fort Worth & Denver City; and via that route there was no combination of intermediate rates aggregating less than the joint through rate. No reparation may therefore properly be awarded on the shipments in question.

As stated, the former commodity rate of 86 cents on bananas in straight carloads was reduced to 81 cents, effective August 7, 1911, but no reduction was made in the rate on coconuts in straight carloads or in mixed carloads with bananas. The defendants admitted that the failure to reduce the rate on coconuts was due to error and that they should take the same rate as bananas.

some other articles, 96 hours. The tariffs under suspension reduce this period to 72 hours, and the first question is as to the reasonableness of this provision.

The carriers stated that there was no good reason why shippers should be allowed a longer period in which to remove these commodities from the freight shed than they would be allowed to remove them from the car. With respect to all the commodities, except hay, nothing has been advanced by the protestants which seems to contradict this statement.

With respect to all commodities except hay, we hold that the respondents have justified the reduction of the free time of 96 hours to 72 hours.

Nearly all the testimony introduced by the protestants referred to the handling of hay, which seems to be merchandized at New Orleans under rather peculiar conditions. The shipment is consigned in the first instance to some commission merchant. The law, or some public regulation, requires that this hay shall be weighed, inspected, and graded by a licensed inspector. While the process itself is not very clearly stated, it was said, and was not disputed by respondents, that practically one day of this free time is used up in weighing, grading, and inspecting the hay, so that the commission merchant is not free to sell his carload until the morning of the second day.

Looking to the peculiar manner in which this hay is handled at New Orleans, we are of the opinion that the present free time should continue in case of that commodity for the future. It will be noted that the hay has been unloaded from the car and the car returned into service.

In the past storage charges have been applied against all these commodities after the expiration of the free time, as follows:

For the first 10 days, 1 cent per 100 pounds.

For the next 10 days and each succeeding 10 days, three-fourths of 1 cent per 100 pounds.

It is proposed to increase these charges for the future to the following scale:

For the first 10 days, 1 cent per 100 pounds; for the second 10 days, 1½ cents per 100 pounds; for the third 10 days, 1½ cents per 100 pounds; for each succeeding 10 days, 2 cents per 100 pounds.

It was said that the purpose of this new scale was to induce shippers to remove their commodities more promptly from the freight sheds, which under the present scale of storage charges they were using as warehouses.

Here again it appeared that the handlers of hay were mainly interested and were the greatest, if not the principal, offenders. The retail dealer, instead of removing his hay in two days, leaves portions of

it in the storehouse for weeks and even for months. None of these retailers provide hay warehouses of their own, and there are no public hay warehouses in the city of New Orleans. It is beyond question that these hay dealers intentionally use these freight sheds of the respondents for warehousing purposes.

This Commission has repeatedly said that it was no part of the duty of a common carrier by rail to furnish warehouses for the storing of the articles transported, even though the convenience of its patrons might so require. We have consistently held that carriers might impose such charges as would compel the removal of freight from their depots and freight sheds. We have in several cases sanctioned the imposition of charges like these upon an ascending scale. *Wilson Produce Co. v. P. R. R. Co.*, 14 I. C. C., 170; *New York Hay Exchange Asso. v. P. R. R. Co.*, 14 I. C. C., 178; *Joynes v. P. R. R. Co.*, 21 I. C. C., 458.

We are satisfied from the testimony that the principle of these rates is correct and that the rates themselves are not excessive. We hold therefore that the defendants have justified the increases.

Under the former schedules Sundays and legal holidays were excluded in computing both the free time and the storage period. The tariffs under suspension include Sundays and holidays in both cases.

It is a uniform rule that in reckoning free time for the purpose of assessing demurrage charges Sundays and legal holidays shall be excluded. We see no difference between free demurrage time and free storage time as used in these tariffs, and we hold that in computing the free time of 72 hours as to other commodities and 96 hours as to hay Sundays and legal holidays should be excluded.

We are of the opinion that in reckoning the storage period after the expiration of the free time, these days may be properly included.

An order will be issued accordingly.

23 I. C. C.

No. 4590.

THOMAS IRON COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

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FOURTH SECTION APPLICATION NO. 1625.

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*Submitted October 2, 1912. Decided December 4, 1913.*

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1. Rate of 60 cents per gross ton on imported iron ore in carloads from Philadelphia to Island Park, Pa., found to have been justified by defendants.
2. A portion of Fourth Section Application No. 1625, filed by defendants, involving a rate on imported iron ore from Philadelphia, Pa., to South Bethlehem, Pa., via Phillipsburg, N. J., less than the rate to Island Park, Pa., granted.

*William A. Glasgow, jr.*, for complainant.

*George Stuart Patterson* and *Frederic L. Ballard* for Pennsylvania Railroad Company.

*R. W. Barrett* for Lehigh Valley Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the manufacture of pig iron at Island Park, Pa. In its petition, filed December 11, 1911, it is alleged that the rate of 60 cents per gross ton established by the defendants for the transportation of imported iron ore in carloads from Girard Point, Philadelphia, Pa., to Island Park, is unjust, unreasonable, and in violation of the fourth section of the act to regulate commerce in that it exceeds the rate to South Bethlehem, Pa., a more distant station. Reparation and the establishment of a reasonable rate for the future are asked.

The portion of Fourth Section Application No. 1625 filed on behalf of the defendants, relating to the maintenance of a higher rate on imported iron ore from Philadelphia to Island Park than is charged to South Bethlehem, was heard in connection with the complaint in this case and will be disposed of herewith.

Island Park is a local station on the Lehigh Valley Railroad between South Bethlehem, Pa., and Phillipsburg, N. J. Shipments of imported iron ore from Girard Point, Philadelphia, at which place the Pennsylvania Railroad maintains a pier and receives iron ore direct from vessels, to Island Park and South Bethlehem, move via Phillipsburg, N. J., at which point the Pennsylvania Railroad connects with the Lehigh Valley.

Prior to April 1, 1910, the defendants' rate on imported iron ore from Philadelphia to Island Park and South Bethlehem was 50 cents per



gross ton. On the above date the rate to Island Park was increased to 60 cents but the rate to South Bethlehem was not changed. These rates are still in force. The distance via the defendants' lines from Philadelphia to Island Park is 88.6 miles and to South Bethlehem 96.2. The short-line distance from Philadelphia to Island Park (66.2 miles) is via the Philadelphia & Reading Railroad to South Bethlehem and thence the Lehigh Valley Railroad. The short-line distance from Philadelphia to South Bethlehem (57 miles) is via the Philadelphia & Reading Railroad. Since August 22, 1906, the rate via the short-line route on import iron ore from Philadelphia to Island Park has been 60 cents and to South Bethlehem 50 cents.

It is the defendants' position that the rate of 60 cents to Island Park is not unreasonable in itself and that this is the same rate that has been charged by the short-line route since 1906. The defendants state that up to April 1, 1910, they were of the belief that the short-line rate was 50 cents, but upon discovering that it was 60 cents they increased their rate accordingly. In defense of the maintenance of a higher rate to Island Park than is charged to South Bethlehem the defendants aver that the short line, having established a rate of 50 cents to South Bethlehem, they are compelled to meet this rate in order to participate in the traffic, and in this connection they refer to the Commission's decision in *Railroad Commission of Nevada v. S. P. Co.*, 21, I. C. C., 329, wherein it was stated:

That the intentment of the law is to make its prohibition of the higher rate for the shorter haul a rule of well-nigh universal application, from which the Commission may deviate only in special cases and then to meet transportation circumstances which are beyond the carrier's control; that is to say, a carrier shall not prefer the more distant point by giving it the lower rate because of any policy of its own initiation, but if at the more distant point it finds a condition to which it must conform under the imperious law of competition if it would participate in traffic to that point, it may discriminate against the intermediate point without violating the law, provided it establishes such necessity before the Commission.

The defendants' rate of 60 cents from Philadelphia to Island Park, a distance of 88.6 miles, yields revenue of 6.77 mills per ton per mile. This is a two-line haul and, considering the distance and all the facts and circumstances surrounding the transportation, defendants have justified the increased rate. From the facts before us it appears that the rate of 50 cents per gross ton on imported iron ore in carloads from Philadelphia to South Bethlehem is forced by short-line competition and that the rate of 60 cents to Island Park does not bear an unreasonable relation to the South Bethlehem rate. Under the circumstances an order will be entered relieving the defendants from the operation of the fourth section of the act in so far as the traffic herein involved is concerned and the complaint in this proceeding will be dismissed.

No. 6039.

PATENT VULCANITE ROOFING COMPANY

v.

AHNAPEE & WESTERN RAILWAY COMPANY ET AL

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*Submitted October 16, 1913. Decided December 1, 1913.*

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Defendants' rate for the transportation of prepared roofing in sheets should not exceed their rate for the transportation of the same article in rolls.

*Frank A. Larish and Herman Mueller* for complainant.

*O. W. Dynes and C. A. Lahey* for defendants.

*R. H. Widdicombe and A. F. Cleveland* for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant alleges that the defendants are guilty of unjust discrimination in that they maintain a lower rate for the transportation of prepared roofing in rolls than for the transportation of the same article in sheets. Prepared roofing is a general term, which includes roofing material composed of a base layer of felt or similar substance saturated with some compound like asphalt and covered with mica, sand, or various other substances to give it wearing quality. This roofing is usually applied in layers of single thickness, except that one sheet laps over the preceding sheet by about 2 inches. It is fastened in place with nails especially designed for the purpose, and the joints are cemented.

When intended to be laid in this manner it is shipped in cylindrical rolls containing about 108 square feet, which, when the lap is allowed for, will lay a square of roofing surface. The roll as shipped is hollow and contains the necessary nails and cement to be used in the laying of the roof. The end of the roll is covered with a metal cap, or with hard paper, the equivalent of the metal cap, to prevent the fraying of the edges. The whole cylinder is wrapped in thick paper.

Prepared roofing is also cut into oblong pieces about 12 by 8 inches, these pieces being applied to the roof in the same way as are wood shingles. When cut into this form they are packed into fiber cartons, each carton containing 480 pieces. The material out of which these pieces are cut is exactly the same as that which is put

up in the cylindrical form. The pieces themselves are ordinarily known as asphalt shingles, and are used, as has been already stated, like shingles of wood or like tile.

The cylinder weighs about 100 pounds; the fiber carton about 50 pounds. Four cartons will cover as much space as one cylinder.

The value of this prepared roofing, as offered for shipment, is about 2 cents per pound, while the value of the carton is slightly more. The cylinders are ordinarily stood on end when loaded into a car, and it was stated that one tier of the ordinary width would weigh about 37,000 pounds. As a practical matter it is not customary or advisable to place other cylinders upon the ends of the cylinders so loaded for the reason that, if this is done, the ends may become torn thus spoiling the entire roll. This prepared roofing is sometimes shipped in cylinders only 16 inches in length, and, in this case, it is customary to lay boards over the ends of the cylinders and place a second tier, also standing upon end, upon these boards, thus preventing the danger of damage to the ends. Some expense attaches to the providing of this lumber, although it does not appear that the boards themselves are injured in transit.

The minimum weight prescribed in the classification for prepared roofing in cylinders is 40,000 pounds for the standard car, and it appears that the shipper ordinarily loads slightly less than that.

Asphalt shingles in cartons can be piled up in tiers to the capacity of the car, and it was said that 80,000 pounds could be placed in a standard car. If cylinders are placed upon their sides and the car so filled the weight of the upper row tends to flatten the cylinders and to force together the paper in the roll, so that it is damaged when unrolled. This is the reason why cylinders are loaded upon the ends. With the carton this does not seem to be the case, since the container itself affords a certain amount of resistance. The complainant testified that it had never received any complaint of damage in case of asphalt shingles shipped in this manner, nor had it ever made any claim for injury received in transit.

The above facts were shown in testimony by the complainant and were in no respect controverted by the defendants, who, though represented by counsel upon the hearing, introduced no testimony.

Both prepared roofing in cylinders, and asphalt shingles, are classified under the western classification as fourth class in less than carloads and fifth class in carloads, minimum weight 40,000 pounds. Where no commodity rate exists, therefore, they bear the same transportation charge. In fact, however, nearly every considerable movement of prepared roofing is covered by a special commodity tariff; for example, the commodity rate on prepared roofing between Chicago and St. Paul is 10 cents per 100 pounds, while the fifth-class rate, 28 L. C. O.

under which asphalt shingles move, is 20 cents per 100 pounds; the rate from Chicago to the Missouri River is 16 cents for prepared roofing, while 27 cents is the fifth-class rate. Without multiplying illustrations it may be said that these two examples fairly illustrate the difference in the transportation charge upon asphalt shingles and prepared roofing in cylinders. The only question presented by this complaint is the alleged discrimination against the shingles. The defendants offered no testimony in justification of the lower charge for the cylindrical package, and the case was submitted without briefs or argument.

The case shows that asphalt shingles are the same article as prepared roofing in cylinders save that the shipment is in cartons instead of rolls. The value of the two articles is substantially the same; the purpose to which they are put is the same, although it may be true that owing to the different manner in which the roofing is applied the shingles come more into competition with wood and tile. The cartons will load, as a practical matter, much heavier than the cylinders. No reason has been suggested why a higher rate should be imposed for the transportation of the shingles than of the cylinders, and we know of none. We are of the opinion that the defendants are practicing an undue discrimination by imposing a higher charge for the transportation of shingles than for the rolls, and that for the future the rate on shingles should not exceed that upon the rolls.

We repeat that the only question considered here is the relative rate between these two articles; no opinion whatever is expressed as to the reasonableness of the rates themselves.

An order will be issued accordingly.

28 I. C. C.

**INVESTIGATION AND SUSPENSION DOCKET No. 303.**  
**RATES ON SODA ASH AND OTHER COMMODITIES FROM**  
**WYANDOTTE, MICH., TO CANADIAN DESTINATIONS.**

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*Submitted November 25, 1913. Decided December 1, 1913.*

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Carriers have not justified the increases in question; the present rates found reasonable for the future; but the carriers allowed to apply to this Commission for modification if the Canadian commission takes such action in the premises as requires such modification, or if a Canadian line not subject to the act to regulate commerce refuses to participate in these rates.

*R. T. Gray and F. J. Goodell* for protestants.

*D. P. Connell, G. W. Kretzinger, jr., O. W. Dynes, R. H. Widdicombe, and A. F. Cleveland* for respondents.

**REPORT OF THE COMMISSION.**

*PROUTY, Commissioner:*

The protestants are located at Wyandotte, Mich., a suburb of Detroit, immediately south of that city, where they manufacture large quantities of soda ash, caustic soda, and bicarbonate of soda. Under the official classification soda ash and caustic soda in carloads are sixth class, while bicarbonate of soda is fifth class.

It appears that in official classification territory all three of the commodities produced by the protestants are moved under a rate which is approximately 85 per cent of the sixth-class rate. Previous to 1908 the rate had been somewhat lower, but was then increased to the present tariff.

Wyandotte is situated just across the Detroit River from Canada, and the respondents establish rates from the plants of the protestants to various Canadian points, the principal ones being Toronto, Hamilton, and London. In 1908 these rates were made the same as those upon the American side in official classification territory—that is, 85 per cent of the fifth-class rate. This seems to have produced a rate of 8½ cents to most of the points in controversy and 9 cents to Toronto.

The testimony of respondent Michigan Central Railroad Company tended to show that at some time subsequent to 1908 the rate to Canadian points had been increased to the sixth-class basis, so that soda ash, caustic soda, and bicarbonate of soda all moved under the sixth-class rate. The tariff under suspension applies the classification in force in official classification territory by canceling the

exception previously in effect, with the result that under the proposed tariff soda ash and caustic soda would continue to move at sixth class while bicarbonate of soda would move at fifth class. The respondent insisted that the only increase was in bicarbonate of soda from sixth to fifth class.

The protestants, upon the contrary, insisted that the rate of 8½ cents to these Canadian points, with the exception of Toronto, was still in effect, and that the effect of the tariff under suspension was to increase the rate upon soda ash and caustic soda to sixth class and upon bicarbonate of soda to fifth class, making the rate 9 cents where it is now 8½, and 10 cents to Toronto and certain other points.

While it is not perhaps of much importance, in the view which we have taken of this matter, to determine who is right in this controversy, it may be said in passing that a somewhat hasty examination of the tariffs shows that the carriers are apparently correct and that the only effect of the tariff under suspension is to advance the rate on bicarbonate of soda from sixth to fifth class.

It would seem that the underlying question in this case is how far this Commission should go in dealing with these rates from Wyandotte to Canadian points. Wyandotte is on the American side of the Detroit River, and the only movement of this commodity upon American soil is that to and upon that river. The bulk of the movement is in Canadian territory and subject to the jurisdiction of the Canadian commission.

It appears that there is located upon the Canadian side one plant at Sandwich just across the river from Detroit, which manufactures caustic soda. No plant in Canada manufactures soda ash or bicarbonate of soda, but the protestants testified that they meet at these Canadian points the most active competition from soda ash and bicarbonate of soda manufactured in England, and that the rate from Montreal to these points, a much greater distance, is about the same as the rate which they had previously enjoyed from Wyandotte. The Canadian lines, on the other hand, insist that under their classification the rate on all these commodities is higher than under the official classification. They have, in fact, maintained from the Canadian plant a rate on caustic soda of 8½ cents against the American rate, but they insist that they ought not to be required to do this but on the contrary should be allowed to bring their tariffs into harmony with the normal adjustment of rates in that territory.

It can not be said that the respondents have justified this increase, unless their unquestioned showing as to Canadian rates presents such a case as would require this Commission to express no opinion in the premises. We are given jurisdiction over traffic from a point in the United States to a point in Canada, and we may undoubtedly act

upon the American lines over which we have jurisdiction to a certain extent in case of such rates. It is doubtful if we could require our American lines to establish and maintain for the future a rate to Canadian points. We can require them to maintain rates which are now in effect until some affirmative action is taken by some Canadian line, over which we have no control, which prevents the continuance of those rates, or until the Canadian commission has acted in the premises. And this, we think, is the course which should be adopted in the present instance. These American lines should be required to secure to these American manufactures a fair rate until the authorities of Canada, which have jurisdiction over the greater part of this transportation service, have acted in the premises, or until by the action of some carrier to which our authority does not extend it has become impossible to comply with our requirement.

We find, therefore, that the carriers have not justified the increases in question, and we are of the opinion that the rates which were in effect at the time of the filing of the tariff under suspension will be just and reasonable for the future and ought not to be exceeded.

It should be noted that these rates to Canadian points are distinctly higher than corresponding rates upon the American side. For example, the rate upon the Michigan Central to Buffalo is  $8\frac{1}{2}$  cents upon all three of these commodities, while to intermediate points between Wyandotte and Buffalo that rate is as high as 10 cents. The protestants stated that there was no movement of these commodities by water from Wyandotte to Buffalo and that there could not be under the circumstances any such movement.

An order will be issued in accordance with the foregoing views, but the carriers may at any time apply to the Commission for a modification of that order if the Canadian commission takes such action in the premises as requires such modification, or if a Canadian line not subject to our jurisdiction refuses to participate in these rates.

No. 5340.  
SLIGO IRON STORE COMPANY  
v.  
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY  
ET AL.

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*Submitted April 10, 1913. Decided December 3, 1913.*

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Rate for the transportation of wagon wood and plow beams, in the rough, from Fayette Junction, Ark., to Huntsville and Austin, Tex., found to be unreasonable to the extent that it exceeds the rate contemporaneously in effect on lumber of the kind from which said articles are manufactured. Reparation awarded.

*Carl Hirdler* for complainant.

*F. H. Wood* for St. Louis & San Francisco Railroad Company.

*H. G. Herbel* and *F. G. Wright* for International & Great Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the purchase and sale of lumber at Fayette Junction, Ark., and having its principal place of business at St. Louis, Mo. By complaint filed November 7, 1912, it alleges that defendants collected unjust and unreasonable charges for the transportation of three carloads of lumber from Fayette Junction, Ark., to Huntsville and Austin, Tex. Reparation is asked.

The shipments in question were billed as lumber and forwarded via defendants' lines in January and February, 1912, two of the cars to Huntsville and one to Austin. At destination charges amounting to \$380.45 were collected at a rate of 35 cents per 100 pounds, applicable to "wagon wood, plow beams and handles, bent felloes, in the rough, sawed to dimensions (not further finished)," from all points in Little Rock-Fort Smith territory, in which Fayette Junction is located, to Texas common points, which include Huntsville and Austin. This rate has since been reduced to 30 cents. According to the testimony the freight charges were originally paid by the consignees, but were deducted from complainant's invoice price in the settlement of accounts, so that they were ultimately paid by complainant. The rate on lumber, except cypress, from and to these points was at the time of the movements and is now 23 cents per 100 pounds.

One of the shipments to Huntsville consisted of a number of pieces of oak wood 12 feet in length, 3 inches and 3.5 inches in width, and 4 inches and 4.5 inches in thickness at one end, tapering to a smaller, four-cornered dimension at the other. In the invoice covering this car these pieces of wood were described as rough oak tongues. The other shipment to Huntsville consisted of a number of pieces of



hickory wood 6 feet in length, 3.25 inches to 4.25 inches in width, and 4.25 inches to 5 inches in thickness, invoiced as hickory axles. The shipment to Austin consisted of a number of pieces of wood ranging from 4 feet to 12 feet in length, 2 inches to 4.5 inches in width, and 3.25 inches to 5.5 inches in thickness, and were invoiced as rough tongues, hawns, reaches, bolsters, axles, and plow beams. All the wood in these shipments was rough sawed with the exception of 150 pieces, termed reaches, contained in the shipment to Austin, which were planed on two sides. The pieces described as plow beams were sawed slightly curved on one side.

Complainant challenges defendants' interpretation of the tariffs and claims these shipments were entitled to the 23-cent rate on lumber of the same kind. It is urged that this traffic is not wagon wood until it has gone through a further process of manufacture; that it is in reality lumber; and that defendants' description amounts to classification not according to the character of the article but according to its use. Complainant states that to all points of destination, other than to Texas, the rates on this traffic are the same as on lumber. Defendants contend that this traffic is different commercially from what is commonly described as lumber; that to the trade it is wagon wood sawed to dimensions, but in the rough; and that the description in the tariff conforms to the commercial description by which these things are bought and sold. The witness on behalf of complainant testified that to St. Paul, Minn., to which point the rate on wagon wood is less than on lumber, this traffic is billed as wagon wood. We are of the opinion that the charges collected were lawfully applicable under the tariffs in force.

In justification of a higher rate on this traffic than on lumber defendants assert that the value of wagon wood is substantially greater than that of lumber and that the average weight per car is less than in the case of lumber shipments. Complainant shows that oak wagon-wood lumber is worth at its mill about \$41 per 1,000 feet, and hickory wagon-wood lumber about 50 per cent more. Defendants quoted from a report issued by the government showing that the average values per 1,000 feet of oak and hickory lumber for the year 1909 were \$20.50 and \$30.80, respectively. These figures, however, include the value of culls as well as selected stock. Defendants state that the average carload weight of wagon wood to Texas is about 36,000 pounds, while on lumber it is about 50,000 pounds.

In explanation of the higher rate on wagon wood than on lumber to Texas points, defendants state that the Texas intrastate rate on the former is higher than on the latter, and that in order to place all producers of this material on a parity the interstate rates on wagon wood to Texas points were likewise made higher than on lumber.

There appear to be no essential transportation differences between wagon wood in the rough and lumber. It is testified that the originating and other carriers in general maintained at the time these shipments were made and now maintain to practically all points in the United States, excepting to Texas, the same rates on wagon wood as are applicable to lumber.

In *Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co.*, 27 I. C. C., 370, 382, we called attention to the lack of uniformity which prevails throughout the country in the relationship of rates on wood articles and lumber, and in that connection used the following language:

This situation should be remedied, and the change should be toward greater uniformity. Rough lumber and finished products should not be given the same rating. The differentiation, however, must be based upon correct principles of classification. To this end we suggest the publication by the three classification committees of a uniform lumber list, to be divided into three or more classes, the first to include rough lumber, and the succeeding classes to include wood articles in their various stages of manufacture. A fixed and proper rate relationship should be established between the manufactured articles and the rough lumber from which they are made. Publication of lumber rates in commodity tariffs should, under this arrangement, automatically fix the rates on lumber products at the proper differentials.

We are of the opinion that until the carriers have promulgated a properly classified lumber list free from unjust discrimination, it is unjust, unreasonable, and discriminatory to force wagon wood and plow beams, in the rough, to bear higher rates than are imposed for like service upon many analogous manufactured wood articles which move at the lumber rates.

Upon consideration of all the facts of record, we are of opinion that the rate charged on the shipments in question was unjust and unreasonable to the extent it exceeded the rate contemporaneously in effect on lumber from and to the same points; that complainant has been damaged in the amount of \$144.24, representing the difference between the charges collected and charges that would have accrued based upon a weight of 102,700 pounds at the rate herein found reasonable; and that it is therefore entitled to an award of reparation for said amount, with interest from March 1, 1912.

Defendants will be required to maintain for the future rates for the transportation of wagon wood and plow beams, in the rough, sawed to dimensions (not further finished), in carloads, from Fayette Junction, Ark., to Huntsville and Austin, Tex., which shall not exceed the rates contemporaneously maintained by them for similar transportation of lumber of the kind from which said wagon wood and plow beams are manufactured.

An order will be entered accordingly.

No. 5737.

HULL VEHICLE COMPANY

v.

SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted June 27, 1913. Decided December 4, 1913.*

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Charges collected by the defendants for the transportation of a carload shipment of buggies from Dallas, Tex., to Savannah, Ga., not shown to have been unreasonable. Complaint dismissed.

*Claude W. Owen and John A. Henderson* for complainant.

*M. P. Callaway* for Southern Railway Company.

*R. D. Coleman* for St. Louis Southwestern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the business of manufacturing vehicles at Savannah, Ga. By complaint, filed April 24, 1913, it alleges that unreasonable charges were collected by the defendants for the transportation of a carload shipment of buggies from Dallas, Tex., to Savannah, Ga. Reparation and the establishment of a reasonable rate are asked.

The shipment described in the complaint moved in January, 1912, and in the absence of a joint through rate was charged at the rate of \$1.91 per 100 pounds, based on the sum of the intermediate rates, made up of \$1.15 from Dallas to Memphis, Tenn., plus 76 cents beyond.

Complainant contends that the rate charged was unreasonable to the extent that it exceeded 83 cents per 100 pounds. The only evidence introduced in support of this contention is that 83 cents was the rate on buggies from Savannah to Dallas. Defendants contend that the rate charged was not unreasonable in itself and should not be compared with the rate from Savannah to Dallas on account of the dissimilarity of conditions affecting the rates from and to these points, and that no buggies are manufactured at Dallas. It is further pointed out that complainant enjoys a peculiar advantage in shipping buggies to Dallas from its factory at Savannah. The 83-cent rate from that point is but 4 cents in excess of the rate from factories several hundred miles less distant from Dallas than Savannah. The complainant admits that buggies are seldom if ever shipped from

Dallas to Savannah, and that in so far as it is concerned there will probably be no further movement in that direction.

The Commission has held that the mere fact that the rate in one direction exceeds the rate between the same points in the opposite direction is not a controlling test of the reasonableness of the higher rate. *MacLeon v. B. & M. R. R. Co.*, 9 I. C. C., 642; *Hewins v. N. Y., N. H. & H. R. R. Co.*, 10 I. C. C., 221; *Wilburine Oil Works v. Pa. R. R. Co.*, 18 I. C. C., 548. The disparity here appearing between the eastbound and westbound rates is surprising and could not be justified except upon the showing of record in this case of a considerable volume of traffic westbound, the desire of defendants to place complainant upon a favorable competitive basis, and the further fact that there is almost no movement of this traffic, and hence no compelling reason for a commodity rate, from Dallas to Savannah.

The evidence fails to show that the rate charged complainant on the shipment in question was unreasonable. An order will be entered dismissing the complaint.

28 I. C. C.

No. 4851.  
**WAVERLY OIL WORKS COMPANY**  
*v.*  
**PENNSYLVANIA RAILROAD COMPANY ET AL.**

*Submitted May 9, 1913. Decided December 3, 1913.*

1. Complainant alleges that the charge of 4 cents per 100 pounds for switching freight to and from its industry, located on the Pennsylvania Railroad at Pittsburgh, Pa., when complainant desires to move its shipments to and from Pittsburgh by lines other than the Pennsylvania, is unreasonable; *Held*, That this Commission under the facts of this case ought not as a matter of discretion, even if it could as a matter of law, to establish a mere switching charge which the competitors of the Pennsylvania lines can absorb and under which they can obtain the virtual use of these terminals; but the Commission has the power to establish joint rates from any point upon these terminals where traffic is received by the Pennsylvania to a point upon any connecting line, and vice versa.
2. While cases may be easily imagined where a railroad would be guilty of undue prejudice by reason of a diversity in switching charges between two localities served by it, that can hardly be true in this case, nor could the Commission on this record require these defendants to maintain the same system of switching charges at Pittsburgh which they maintain at other points upon their system.
3. No unjust discrimination arises out of the circumstance that the different members of the Pennsylvania system accord the use of their Pittsburgh terminals to one another while refusing it on the same terms to their outside competitors.
4. A series of joint rates from various points to points on the Pittsburgh terminals, and vice versa, should be established based upon the suggestions in this report.

*C. D. Chamberlin* for complainant.

*Frank Lyon* for Grain & Hay Exchange of Pittsburgh, intervener.

*G. C. Hartman* for Chamber of Commerce of Pittsburgh, intervener.

*Young, McClintock & Painter* for Pittsburgh Produce Trade Association, intervener.

*Henry Wolf Bicklé, A. P. Burgwin, and G. S. Patterson* for Pennsylvania Railroad Company and its affiliated lines.

*A. S. Bowie* for Baltimore & Ohio Railroad Company and Pittsburgh Junction Railway Company.

*G. E. Shaw and L. T. Bihler* for Union Railroad Company.

*F. C. Baird* for Bessemer & Lake Erie Railroad Company.

*W. W. Collin, jr.,* for Pittsburgh & Lake Erie Railroad Company.

the extent to which these charges are absorbed, vary greatly in different parts of the United States. It would be going far to say that because the Pennsylvania Railroad establishes a certain switching rate in one locality it must apply that rate in all localities. It must certainly apply everywhere a reasonable charge.

It is said that the charge in Cleveland is \$2 per car, but we are not informed of the extent of the service performed. Must railroads which serve Cleveland and enter Chicago switch within the limits of that city for \$2 per car or be held guilty of undue discrimination if they do not? Can it be said that the price fixed in Chicago is to determine that at Pittsburgh? We are not prepared to sustain this contention upon the part of the complainant. While cases may be easily imagined where a railroad would be guilty of undue discrimination by reason of a diversity in switching charges between two localities served by it, that can hardly be true in this case, nor could we in this case require these defendants to maintain the same system of switching charges at Pittsburgh which they maintain at other points upon their system. In *Merchants & Manufacturers' Assn. of Baltimore v. P. R. R. Co.*, 23 I. C. C., 474, we declined to hold that the defendants must establish a switching charge by the car because such was their practice in other cities, and we permitted in that case a much higher charge than was in force at Cleveland.

The factory of the complainant is situated upon the tracks of the Pennsylvania Railroad. The Pennsylvania lines west of Pittsburgh are controlled or operated by the Pennsylvania Company, the entire stock of which is owned by the Pennsylvania Railroad. Lines west of Pittsburgh are, however, independently operated. Now, this case shows that while the Pennsylvania Railroad declines to open its terminals to other systems entering Pittsburgh it does form an arrangement with its own family lines by which traffic reaching Pittsburgh by any of these lines will be delivered free of charge to any point upon any of the Pennsylvania lines within the switching limits, and, also, by which traffic will be taken up at any point upon any of these lines by any one of the family lines without exacting a switching charge from the shipper. The second claim of the complainant is that by this arrangement the Pennsylvania Railroad is guilty of unjust discrimination. It is asserted that even though it has the right to close its terminals against all railroads it can not open them to one route without opening them to all routes.

The courts have in one or two instances held that the third section does not prevent carriers from entering into arrangements for the exchange of freight with one connecting carrier, while declining to do so with another. *Kentucky, etc., Bridge Co. v. L. & N. R. R. Co.*,

37 Fed., 567. *Little Rock, etc., Ry. Co. v. St. L., Ill. & S. R. R. Co.*,  
59 Fed., 400. In the last case it was said:

The fact that one connecting railway has a contract for the interchange of interstate commerce freight which involves the use of the receiving railway's tracks and terminal facilities would not authorize a court of equity to compel the receiving railway to grant a like contract or concession to another connecting company.

These cases may have once been authorities for holding that it was not as a matter of law in violation of the third section for a railway to open its terminals under a contract for the interchange of freight with one company while declining to do so with another, but we think the statute has been so amended that it is to-day for the Commission to say whether as a matter of fact the discrimination thereby occasioned is undue—that is, whether as a matter of fact if a railroad opens its terminal to one connection it should open it to all. Looking at the present situation as a question of fact, we are not impressed that these Pennsylvania lines unduly discriminate against other lines by declining to accord the same treatment to outside railroads which they accord to one another. While the lines are independently operated, their ownership is identical. These lines have been welded into one system. It seems to us a natural thing, and one of great benefit to the public, that these family lines should treat the industries of Pittsburgh as though all these lines which are in fact connected by a common ownership were under a common operation in name as well as in fact. We hold that there is no unjust discrimination arising out of the circumstance that the different members of the Pennsylvania system accord the use of their terminals to one another while refusing it on the same terms to their outside competitors.

The complainant in the third place insists that whether the Pennsylvania system can or can not be compelled to open its terminals, it has in fact done so. It does receive and transport traffic between industries upon its line and connecting lines, and does make a charge for that service. Now it is said that the Commission may lay hold of that situation and reduce that charge to any reasonable figure.

The Pennsylvania Railroad publishes a tariff for the movement of freight between points upon its line. It applies that tariff to the switch movement of these carloads; that is, it makes the same charge for moving a carload of freight between a point on its terminal tracks and the connecting track of another railroad in the city of Pittsburgh which it would charge for a movement for the same distance upon its main line. The testimony indicates it to be the understanding of its officials that if traffic is offered for movement between such points it must accept it and must move it at its published rate. Under these circumstances, should the Commission reduce that rate?

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The case of the *Merchants & Manufacturers' Asso. of Baltimore v. P. R. R. Co.*, *supra*, is cited as an authority upon this point, but the facts in that case were different. There perhaps ought to be, and perhaps at some time will be, a general rule applicable to all terminals which can be applied with uniformity. To-day there is no such rule, and for the present each case must be dealt with upon its peculiar facts as presented. Under the facts of this case we hesitate to hold that the Commission should reduce this charge and apply the reduced figure as a switching charge which may be absorbed by the competitors of the Pennsylvania. This tariff is not intended for switching service and is manifestly unreasonable when applied to that service.

This leaves for determination the broad question, Should the Pennsylvania system be required to handle to and from industries upon its terminals at Pittsburgh freight which has been brought to Pittsburgh by other lines; and if so, under what circumstances and for what compensation? The claim of the Pennsylvania is that this Commission has no such authority. That company asserts that its terminals have been created at great expense; that under the local conditions at Pittsburgh they could not be duplicated; that they are necessary to the operation of the road, which could not discharge its duties as a common carrier without them, and that to compel the opening of them to other railroads would be virtually a taking of the property of that company. This situation, it is further urged, has been recognized by the Congress, since the third section of the act, while requiring the railroads subject to it to freely interchange traffic, has added these words:

but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

In this position of the Pennsylvania there is much force. Its terminals at Pittsburgh could not be enlarged materially without great expense and at some places not at all. They are none too extensive for the business of that company. To open those terminals to its competitors without further compensation than a mere switching charge would, under the circumstances existing at Pittsburgh, seem to be unjust and unreasonable. Take, as an illustration, the Wabash Railroad, which has recently obtained an entrance into Pittsburgh and which has practically no terminal facilities. This road competes with the Pennsylvania for traffic to and from Pittsburgh at many points. Shall it have the right to demand upon the payment of a switching charge an entrance to those terminals?

The claim that to require the Pennsylvania to handle the cars of the Wabash for a switching charge reasonable as based upon the

cost of service would be to give the use of those terminals to its competitor has great force. The Supreme Court of the United States has itself apparently so said in *L. & N. R. R. Co. v. Stock Yards Co.*, 212 U. S., 139.

The Central Stock Yards at Louisville were located upon the Southern Railway and were the live-stock station of that railroad; the Bourbon Stock Yards were located upon the Louisville & Nashville Railroad, of which they were the live-stock depot. An attempt was made to compel the Louisville & Nashville to deliver stock at Louisville to the Southern Railway for transfer to the Central Stock Yards, and, conversely, to receive cars from the Southern Railway destined to the Bourbon Stock Yards. The constitution of Kentucky contained a provision much resembling our third section, requiring the interchange of cars, and the commission of Kentucky under that provision made an order that the Louisville & Nashville should receive cars tendered to it for the Bourbon Stock Yards. The Supreme Court held that this order was invalid, using the following language:

There remains for consideration only the third division of the judgment which requires the plaintiff in error to receive at the connecting point, and to switch, transport, and deliver all live stock consigned from the Central Stock Yards to any one at the Bourbon Stock Yards. This also is based upon the sections of the constitution that have been quoted. If the principle is sound, every road into Louisville, by making a physical connection with the Louisville & Nashville, can get the use of its costly terminals and make it do the switching necessary to that end upon simply paying for the service of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of cars offered to it at an arbitrary point near its terminals by a competing road for the purpose of reaching and using its terminal station. To require such an acceptance is to take its property in a very effective sense, and can not be justified unless the railroad holds that property subject to greater liabilities than those incident to its calling alone. The Court of Appeals did not put its decision upon any supposed *special* liability, but on the *broad ground* that the state constitution requires it and lawfully may require it of a common carrier by rail. Therefore the judgment must be reversed.

The holding of this Commission in *Morris Iron Co. v. B. & O. R. R. Co.*, 26 I. C. C., 240, was apparently to the same effect. Upon further consideration of the matter, we do not think that this Commission under the circumstances in this case ought as a matter of discretion, even if it could as a matter of law, to establish a mere switching charge which the competitors of the Pennsylvania lines can absorb and under which they obtain the virtual use of these terminals.

What, then, are the rights of the public in these terminals? Can the Pennsylvania, having first acquired them, exclude from their use all persons desiring to reach the industries located on them unless they reach them through the Pennsylvania Railroad? It may be said

that the public can condemn these terminals, or any portion of them, but in the city of Pittsburgh that would be well nigh impossible and certainly unnecessary at the present time.

As was said by this Commission very recently in *St. Louis, S. & P. R. R. Co. v. P. & P. U. Ry. Co.*, 26 I. C. C., 226, there is nothing sacred about the terminals of a railroad. They are available to the public and may be regulated by the public in exactly the same way that any other part of a railroad can be. No portion of the property of a railroad can be taken without due process of law nor without just compensation, but to require of a railroad to put any portion of its property to a proper public service at a just rate is not to take it without due process of law. The third section itself, which is relied upon by these defendants, makes no distinction between "tracks and terminal facilities." The requirement upon the carrier for the use of its terminals must be reasonable and the compensation must be fixed, not on the basis of mere cost of service but in view of the fact that the terminals are of special value to a railroad as a part of its system. In our opinion the public may require the Pennsylvania to handle cars to and from industries upon its terminal tracks in the city of Pittsburgh, but that requirement should be made and the compensation should be determined in view of the entire situation, and we are further of the opinion that the present power of the Commission is adequate to that end.

In *McNeill v. S. Ry. Co.*, 202 U. S., 543, the Supreme Court of the United States held that an interstate shipment was subject to federal regulation and could not be interfered with by the state until it was finally delivered to the shipper. In that case a carload of coal had been brought from a point without the state of North Carolina but was still upon the tracks of the Southern Railway and undelivered. The decision of the court was that the state commission could not direct as to the delivery of that carload, this being a matter of federal jurisdiction.

This case determines that the authority of the federal government in case of an interstate shipment extends from the point where the traffic is received from the shipper to the point where it is finally laid down by the railroad for delivery to the consignee. Apply this case to a shipment upon the Pennsylvania itself to Pittsburgh. How far does the authority of this Commission extend in fixing the rate under which that shipment moves? Is that authority exhausted when we establish a rate to Pittsburgh? What does Pittsburgh signify when used in that sense? The switching limits covered by that term are ten miles in length and several miles in width. Within those limits are several stations for the delivery of parcel freight and a great number of places at which carload freight is delivered. Whether the

rate named applies to one point or another is of great importance to the shipper, and might often be the means of much serious discrimination. It is manifest that authority to fix the rate must mean authority to fix the rate from the point where the shipment is taken up by the Pennsylvania to the point where it is finally laid down by that company.

Assume, now, that this shipment is moving under a joint rate between the Pennsylvania and some other railroad connecting with the Pennsylvania at a point distant from the city of Pittsburgh. Here the same rule must apply. The authority of the Commission to fix that joint rate must be as broad as the service. It must apply from the point where the traffic is received to the point where it is delivered by the railroad.

Why should the rule be different when traffic is delivered to the Pennsylvania at Pittsburgh than when it is delivered 5 or 25 miles from the city of Pittsburgh? Does the mere fact that these miles of track known as Pittsburgh are called terminals prevent public authority from requiring the movement of freight from point to point within those limits and determining the rate at which it shall move, and if the movement were across a state line must not that be regulated by the federal government, and has not this Commission to-day jurisdiction over that subject? We think it clearly has. This Commission may, in our opinion, establish a joint rate from any point upon these terminals where traffic is received by the Pennsylvania to a point upon any connecting line. The language quoted from the Supreme Court might, if literally read, indicate otherwise, but that language was not used with reference to a situation like the one before us. The power of this Commission must extend to the entire service rendered by the carrier and must be as extensive as that service.<sup>1</sup>

This power to establish a joint rate must, however, be exercised under the limitations imposed upon this Commission in the fixing of joint rates, and these limitations should be kept clearly in mind. Originally the statute contained no provision permitting the establishment of a joint rate between two carriers by public authority, and the courts held that, notwithstanding the provisions of the third section, railroads were free to select their connections and to make such arrangements for the handling of through business with those connections as they saw fit. To make such arrangements with one railroad and exclude another was not an undue discrimination.

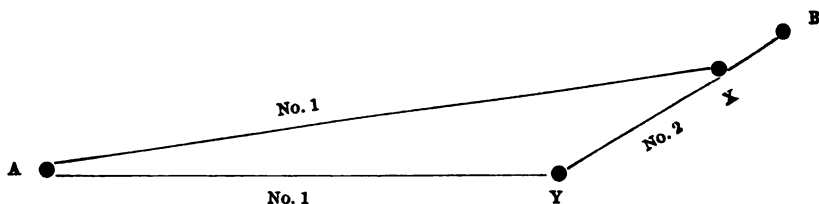
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<sup>1</sup> *Grand Trunk Railway Company of Canada v. Michigan Railroad Commission*, 231 U. S., 457, decided by the Supreme Court of the United States December 8, 1913, since the opinion in this case was agreed to, is in exact accord with this view. It is there held that the terminal tracks of a railroad may be put to the purpose of legitimate transportation for the benefit of the public as are its main lines, and this is what the Commission here decides.

Later the act was amended so as to give this Commission authority to establish a through route between points where no "reasonable and satisfactory route" already existed. If a railroad had provided one satisfactory route for the transaction of business, either all the way by its own line or by its own line in connection with some other line, this Commission had no authority to establish an additional route. The manifest intent of this provision was to permit a railroad to handle by such route as it saw fit traffic which it could obtain, provided it offered a satisfactory route and therefore protected the public interest.

Still later this provision for joint rates was changed so as to allow the establishment between two points of an indefinite number of routes, but it was now provided that in the establishing of a through route no railroad should be required to haul traffic over less than the entire length of its line unless such route was unduly circuitous. The purpose of Congress here again is plain. If a railroad has traffic in its possession, it shall be allowed to handle it by its own line as far as it can unless the public interest will suffer thereby.

A question arises in the practical application of this statute which will be most easily understood from the diagram below:



Railroad No. 1 extends from A to X and from A to Y; railroad No. 2 from B to Y. If, now, a through route is to be established between A and B, shall it make via the junction at Y or via the junction at X? The statute does not in terms answer this question, but the manifest intent of Congress was to provide that a shipment from A should be routed via junction X, giving railroad No. 1, which initiates and has possession of the traffic, the long haul, while a shipment originating at B should be routed via junction Y, thus giving to railroad No. 2, which has possession of the traffic, its long haul.

Let us now apply this interpretation of the statute to traffic between Baltimore and Pittsburgh, via the Pennsylvania and the Baltimore & Ohio. Assume, first, that traffic is delivered to the Pennsylvania, or originates upon the terminals of the Pennsylvania in the city of Baltimore, destined to an industry upon the terminals of the Pennsylvania at Pittsburgh. Under our power to establish a joint rate we have no right, directly or indirectly, to deliver that traffic to the Baltimore & Ohio for any part of the transportation.

The Pennsylvania has a direct line by which it can handle the business, and no system of switching charges should be enforced by which the Baltimore & Ohio can take that traffic from the Pennsylvania.

Assume, next, that the traffic originates at a point upon the Baltimore & Ohio in Baltimore. It is now in the possession of that road, which has the right to the long haul and which should be allowed to transport it to Pittsburgh and there deliver it to the Pennsylvania for movement to the industry.

The rate for the movement in the second case ought to exceed that for the movement in the first case. A two-line haul is involved in the second case, as against a one-line haul in the first. The expense of handling the traffic is greater and the charge paid by the public should also be greater.

Let it be noted that no part of that charge can be refunded to the shipper. Under the practice generally in vogue and recognized by this Commission, if a switching charge were imposed for the movement of this car by the Pennsylvania to its industry the Baltimore & Ohio could absorb or pay that switching charge, thus giving to the shipper the benefit of the rate from Baltimore to Pittsburgh, but if a joint through rate be established the entire rate must be paid by the shipper and retained by the carrier.

It should further be noted that while the joint rate to the industry upon the Pennsylvania is possibly 1 cent per 100 pounds higher than the regular rate from Baltimore to Pittsburgh via either of these lines, that does not necessarily furnish the basis for dividing that rate. The Baltimore & Ohio has been relieved of a terminal service at Pittsburgh and should be willing to take less for that reason than as though delivery had been upon its own track. The Pennsylvania has performed that service and should be entitled to receive, in addition to the difference between the joint and the single-line rate, something therefor from the Baltimore & Ohio; that is, the division of the Pennsylvania ought to be more than the additional charge to the public, depending upon a variety of circumstances which will not be here discussed.

It is our opinion that a series of joint rates from various points to Pittsburgh should be worked out in accordance with this holding. We do not at this time undertake to say how much the joint rate to a point upon a Pennsylvania terminal should exceed the regular Pittsburgh rate. In *Merchant & Manufacturers' Asso. of Baltimore v. P. R. R. Co.*, *supra.*, we allowed 5 cents per 100 pounds upon the first two classes and 2 cents per 100 pounds upon the last four classes. This would seem to result in imposing upon the public under conditions existing at Pittsburgh too high a charge in case of the last two classes, where the minimum usually exceeds 30,000 pounds.

We express no opinion whatever as to the division which may properly be allowed between these carriers. Such rates might probably be provided for by the publication of a tariff naming in general terms the amount to be added when for delivery upon the Pennsylvania track, in which the Pennsylvania should concur, and vice versa.

While this complaint asks the Commission to order the defendants to enter into mutual switching arrangements with one another in the city of Pittsburgh, it is doubtful if it can be construed to be an application for the fixing of joint rates, as indicated in the foregoing report. We shall therefore attempt to make no order at this time. If the carriers do not work out a system of rates based upon the suggestions in this opinion the complainant may amend its petition and we will further hear the parties and proceed to a definite establishment of such joint rates unless cause to the contrary is shown.

McCHORD, *Commissioner*, concurring:

In the general disposition of this case I concur, but I do not agree with the construction placed on the decision of the Supreme Court in the *Louisville Stock Yards case*. There the only question before the court was, first, whether the Louisville & Nashville Railroad, after transporting live stock to Louisville, where it had stock yards of its own, could be compelled to turn such traffic over to the Southern Railway for movement to the stock yards of that carrier in Louisville when such delivery would require the Louisville & Nashville Railroad either to build chutes to transfer cattle to cars of the Southern Railway or to permit its cars to pass out of its possession when there was no provision for their return or compensation for their detention; second, whether the Louisville & Nashville could be compelled to switch to its own stock yards, cattle from the Southern Railway stock yards at Louisville. The broad question of interswitching at terminals was not presented, and I do not believe that the decision rightly can be given the interpretation which is accorded it by the majority opinion. My opinion in this regard seems fortified by the decision of the Supreme Court in *Grand Trunk Railway Company of Canada v. Michigan Railroad Commission*, 231 U. S., 457, to which my attention has just been called and which was delivered December 8, 1913.

I also do not agree that the additional cost of switching to an industry on another line necessarily must be borne by the shipper and can not be absorbed by the initial carrier. I concede that this Commission could not require such absorption, unless to remove unjust discrimination, but I am unable to see why the full force of com-



petition should not be given as much play in this respect as in the many cases where carriers offset certain of their disadvantages by shrinkage of their revenue. To say that the public must pay a greater charge for such a movement to Pittsburgh because the expense of handling the traffic is greater than if transported by but one carrier, to my mind, gives to the cost of the service an exaggerated influence. A strict application of this theory would divert all traffic to the most economically operated routes, a proposition at once untenable. That the owner of the terminal used is entitled to proper and adequate compensation is fundamental, but that this compensation must come from the shipper does not to me appear sound legally or economically, and, in fact, its impropriety is partially conceded in the majority opinion, where it is proposed to give to the terminal line something more than the additional rate paid by the shipper. To do this the road-haul carrier must shrink some of its revenue, and if it be proper to shrink some, why may it not legally shrink enough adequately to compensate the terminal road? I appreciate that there may be a saving in terminal expense to the initial carrier and that, perhaps, the terminal line is entitled to more than it would demand for the use of its terminals where it performed the road movement, but I do not see why there must be a division of the terminal charge between the shipper and the initial carrier. In view of the possible saving of terminal expense and of the competitive conditions, would it be unlawful for the initial carrier to publish to its interchange track in Pittsburgh proportional rates that would equalize the through charges, as is done at the river crossings and at the most important gateways?

28 I. C. C.

No. 3184.  
RAILROAD COMMISSIONERS OF THE STATE OF  
FLORIDA

v.

SOUTHERN EXPRESS COMPANY.

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*Submitted April 26, 1912. Decided January 6, 1914.*

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Commodity rates of the Southern Express Company for the transportation of citrus fruits, pineapples, cantaloupes, and vegetables from points in Florida to numerous destinations south of the Ohio and Potomac Rivers and east of the Mississippi River having been considered in connection with and substantially reduced in many instances as the result of the conclusions announced and order entered in the general express investigation recently conducted by the Commission, no order will now be entered in this case.

*A. A. Boggs, Louis C. Massey, and F. M. Hudson for complainants.  
Robert C. Alston and W. E. Kay for defendant.*

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint is filed by the Railroad Commissioners of Florida on behalf of the growers of fruits and vegetables in that state, against the Southern Express Company, and assails as unjust and unreasonable the rates charged by defendant for the transportation of fruits and vegetables from points of production in the state of Florida to defendant's stations in the territory south of the Ohio and Potomac rivers and east of the Mississippi River. The complaint is general in its nature and assails the whole schedule of commodity rates on this produce from the Florida points to some 3,000 points in the territory above defined.

It is alleged that the rates complained of on fruits and vegetables have been gradually increased by the defendant within recent years and that they have now reached a point where they prohibit the movement. It is also averred that the rates on vegetables destined to Atlanta are unlawful because in excess of those charged to Cincinnati, a more distant point. The complaint contains an elaborate schedule of proposed rates which complainants suggest as just and reasonable for the service involved.

The testimony shows that there is a considerable movement of fruits and vegetables from Florida by freight in carloads to large northern markets on and beyond the Ohio and Potomac rivers as

well as to large centers in the southeast, but that in the last-named section there is an important consuming public located in the smaller communities not always tributary to a large central market and to which complainants assert they could profitably distribute these products in small amounts, in some cases even in single-package lots, provided there were in effect reasonable express rates applicable thereto. Certain of the witnesses testified that they were formerly engaged in this business but that the rates are now found to be so excessive as to destroy it. The producers are entirely dependent upon the express company for this desired service because shipments to the smaller communities which they are now trying to reach are not of sufficient size to warrant the movement in carload quantities and at carload rates and the less-than-carload service by freight is too slow for the perishable traffic involved, except to points where the "package cars" are run, and these are comparatively few in number. One of the witnesses for complainants testified as follows:

Our particular interest in the express movement and citrus fruit is in the nature of what we term local shipments; by local not meaning as to distance but as to quantity in one particular shipment. In carload-lot shipments, which we use as a term in contradistinction to merely local shipments, we move from point of origin to point of final destination, so far as we are concerned with fruit in carload lots. That service by freight is in the main very satisfactory. We have no plea to make for solid car lot movements by express.

It is argued on behalf of complainants that the fact that the present rates have had a tendency to prohibit the movement of the traffic proves that the rates should be reduced. Such a conclusion does not necessarily follow. While the fact that traffic moves freely has some bearing upon the reasonableness of the rates, it is not true that merely because the traffic does not move the rates are therefore unreasonable. The carriers are entitled to a reasonable compensation for the services they render; yet this compensation might require the establishment of rates upon which shippers could not do business at a profit, and in such a case the Commission could not lawfully prescribe rates unremunerative to the carrier. A similar contention to the one here made has been advanced in other cases where producers seek lower rates. The contention is so unsound and yet so persistently urged that we deem it advisable to repeat what we have said in a similar case:

Several witnesses, members of complainant organization, engaged in producing vegetables at Ponchatoula, testified as to the poor financial returns they were deriving from their business and alleged that their condition was due to the absorption of profits by freight rates. These shippers apparently entirely misconceive the powers of the Commission in fixing a reasonable rate. The Commission can not lawfully base rates upon the profits derived in a particular business. It might be that in a favorable season the farmers of Ponchatoula would receive large and generous returns from their labors, but this fact would not justify the carriers in charging for transporting the

vegetables to market more than a reasonable rate for the service performed. In another season the market prices might be such that there would be little or no profit in the business, yet such fact would not justify the Commission in requiring the carriers to transport the produce at a less rate than would be reasonable for the service performed. The law does not require the carriers to regulate the price of transportation upon the basis of profits to the shipper, and in authorizing the Commission to fix reasonable rates the law presumes that the measure of reasonableness will be based upon all the many elements of the particular traffic involved. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.*, 19 I. C. C., 513, 515.

The defendant contends broadly that the rates assailed are reasonable, but in meeting the contention of complainant that judged by the theory of value of the service to the shipper the rates are too high, it was stated that as the service required is an express service the rates should be kept high enough to prevent a movement of so great a volume of tonnage as would impair the efficiency of the passenger service. The record gives an answer to this difficulty in so far as this particular case is concerned. It is shown that when the ripening season in Florida comes on, with the resulting growth in the express movement, the material impairment of the passenger schedule is avoided by putting on special express trains carrying four or more cars of express matter. It is further shown that this arrangement effects considerable economy in the rendering of this service as only one messenger is necessary for the operation of an entire train.

It is shown that during the ripening season there is a heavy movement via these special express trains through to Jacksonville, and also to Savannah, where the trainloads are broken up and distributed in smaller lots, some of which go forward via water lines and others become a freight movement via the Atlantic Coast Despatch. These movements, which are partly by express and partly by water or freight, are referred to as "consigned routings," and it is said that a very heavy movement of vegetables is transported in this manner because the rates are so adjusted that one can ship by express to Jacksonville and thence via the Clyde line or Atlantic Coast Despatch for a mere fraction above the through freight rates. The service for which Florida producers are desirous of obtaining lower rates should be distinguished from this movement, for although it appears that there is a general rehandling of all express matter originating in the interior of the state at Jacksonville, and that the shipments of complainants under the rates here involved would be similarly treated up to Jacksonville, the movement would require an express service through to destination, and the produce would be rehandled at Jacksonville and would move out of Jacksonville by express and be distributed in small lots throughout the southeastern territory.

It is claimed that if reasonable rates are established there are peculiarities in connection with this traffic itself and in the comparative nearness of the markets sought that would develop a large movement, and that both the producers and the consumers would be greatly benefited thereby. It is said that there is a necessity for an express service to the southern towns and villages that does not exist as to northern towns. It is shown that by direct shipments by express to small southern points the produce would not have to go through the large jobbing houses in the cities which receive the carloads, there break bulk and ship out in smaller quantities to smaller towns; that besides involving the middleman's profit, this necessitates a great loss of time which is fatal because of the perishable nature of the traffic; that the markets sought are small in themselves but collectively they afford a vast number of consumers. The testimony is that, as to several varieties of produce, there is an economic waste which a reasonable system of rates to southern points would avoid; that these products ripen at all seasons of the year sporadically, and then come in with a heavy crop in the summer. The sporadically ripened produce growing out of season, and a large amount of the regular crop which inevitably ripens on the stalk, can not be shipped in carloads. The produce that ripens out of season does not come in a sufficiently large quantity at any one time to ship in carloads, while in season it is impossible to gather them without a considerable portion ripening by the time it reaches the packing house; that this valuable portion of the crop must move to nearby consuming territory with rapidity; that at the present time a large quantity is thrown away because it can not reach the nearby markets on account of the express rates, and it can not go to the distant markets because of its perishability. There is a heavy movement of tomatoes out of Florida. They are gathered in a green condition for shipment to northern markets, but in harvesting the product in the field a large proportion ripens and can only be shipped to nearby markets by express.

The testimony is that the character of service rendered in connection with this traffic is comparatively inexpensive for express service. Collection and delivery at points of origin and destination are ordinarily important elements in the service rendered directly by an express company, but are not always performed as to the traffic here involved, it being delivered to the carrier on its station platform and seldom transported therefrom to the consignee at destination. It is further shown that from points of origin the shipments move at certain times in ventilated cars and in box cars in the trains run to accommodate this traffic during the ripening season, and that the movement of these trains on the Florida East Coast Railroad from

Miami to Jacksonville is 17½ miles per hour. In short, it is said to approximate a fast-freight service.

It is averred on behalf of defendant that the express rates under consideration should bear some relation to the less-than-carload freight rates between the same points. No basis for ascertaining what that relationship should be has been offered. The farmers assert that the less-than-carload freight rates are merely paper rates in so far as they are concerned; that there is no movement by freight to the markets which they are here seeking at either carload or less-than-carload freight rates; that due to the peculiarities of their needs hereinbefore described the traffic demands an express service only; that the failure of the commodities in question to move at prevailing freight rates relates to the character of the service itself, the freight service not being suitable for their needs.

In seeking to meet the contention that the effect of the present express rates has been to largely curtail the movement by express, defendant introduced statistics as to the growth of the acreage and production, but what amount of this increased production moved by express to the particular class of stations in the particular section of the country under consideration does not appear.

In the brief of counsel for defendant filed subsequent to the second hearing, it is stated that for the season 1909-1910 the movement of Florida produce to what is designated as local territory, that is, territory reached by defendant, was 30.51 per cent of the total; in 1911 it was 33.17 per cent of the total; that the consigned movement and the local movement combined for 1910-1911 was 46.21 per cent of the total. It is averred that the local movement is a liberal part of the entire movement, and that it shows a tendency to increase. It will be noticed that these percentages are based upon figures for tonnage which are not a part of the record. In order to consider them intelligently in connection with the issues involved in this case it would be important to know the proper relation between the fruit movement and vegetable movement. It would also be necessary, in an intelligent analysis of these figures, to know the tonnage of the various sized containers, as the rates thereon vary considerably, and what might be a reasonable rate upon which the tonnage would move for one container might be unjust and unreasonable as to another. From our knowledge of the case as a whole it would be important to know the movement for various distances from points of origin, as considerable light has been thrown upon the rates under consideration by an examination into the relation between the rates to the nearer markets when compared with those to more distant territory.

The record, as made up on behalf of both complainant and defendant, consists largely of exhibits showing the history of the rates from 1897 down to the present time. We have devoted much time and labor to an analysis of these exhibits, with the result that those submitted on behalf of complainant show that the rates have

been increased, while the exhibits of defendant show to the contrary. This is possible because of the large number of rates involved and for the reason that the points of origin and destination are numerous. Furthermore, the rates published by the defendant on this traffic in the past are in a very confused state, and there are many variations in the weight of the packages upon which the per-package rates have been based. Moreover, defendant formerly permitted the division superintendents to make rates from and to points on their respective divisions. The many changes in the manner and method of publishing rates have naturally led to many inconsistencies in the past, and many appear in current tariffs. Certain of the tariffs filed of record were in force long before the express companies were brought under the requirements of the act.

The record in this case was completed and the case submitted while the Commission was engaged in the general investigation of the rates, methods, and practices of express companies. Determination of the instant case and a number of others arising on specific complaint has been withheld that they might be viewed in the light of the outcome and results of this general proceeding.

We have fully considered the facts, circumstances, and conditions presented by the record in the case now before us in view of our findings, conclusions, and order in the general proceeding referred to. We are convinced that many of the rates involved in this case are unreasonable and unjust, and that improper and unjustifiable adjustments and relationships in rates have grown up. We do not deem it necessary, however, at this time to make an order in this case, because, as a result of our report and conclusions in the general proceeding, the defendant company has filed supplements to its tariffs, effective February 1, 1914, providing for the application on the commodities here involved of the second-class rates prescribed by this Commission in all instances where the rates are now in excess thereof. This will result in substantial reduction of many of the rates in question and will in a marked degree afford relief from inequalities now existing. We are not convinced that the ends of justice require at this time greater reductions than will result in the manner indicated. We think it will be generally agreed that there should be a fair test of the rates resulting from our order in the general case before we make exceptions requiring lower rates on particular commodities.

INVESTIGATION AND SUSPENSION DOCKET No. 252.  
KANSAS CITY & MEMPHIS RAILWAY COMPANY RATE  
CANCELLATION.

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*Submitted October 15, 1913. Decided December 8, 1913.*

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Proposed cancellation of joint through rates between the St. Louis & San Francisco and Kansas City & Memphis railways (the latter extending 30 miles from Rogers to Siloam Springs, Ark.) permitted to become effective as to junction points between the two carriers. To and from local points on the Kansas City & Memphis joint rates ordered to be maintained, which may be made a reasonable amount above the junction-point rate.

*Dick Rice* and *R. J. Hobbs* for Kansas City & Memphis Railway Company, Fountain City Lumber Company, Reed & Fergus, Benton County Hardware Company, and Williams Tie & Timber Company.  
*Fred H. Wood* for St. Louis & San Francisco Railroad Company.  
*Fred G. Wright* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

**CLEMENTS, Commissioner:**

This investigation involves the proposed cancellation by the St. Louis & San Francisco Railroad Company of all its joint rates made in connection with the Kansas City & Memphis Railroad Company. The tariffs carrying the proposed increases have been suspended in their operation until February 16, 1914. The St. Louis & San Francisco Railroad Company will be referred to hereinafter as the Frisco, and the Kansas City & Memphis and the shippers located on its line as the protestants.

Rogers, Ark., is 334 miles southwest of St. Louis. Fayetteville is 19 miles south of Rogers. Both of these Arkansas points are located on the main line of the St. Louis & San Francisco Railroad, between St. Louis and Dallas. Southwestwardly from Rogers runs the Kansas City & Memphis Railway to Siloam Springs, Ark., a distance of 30 miles. From Cave Springs, on this latter line, 10 miles southwest of Rogers, is projected, in a southeasterly direction, another portion of the line of the Kansas City & Memphis, to the Frisco, at Fayetteville, a distance of 21 miles. From Freeman, 2 miles west of Rogers, the remaining spur of the Kansas City & Memphis projects east to Monte Ne, a distance of 6 miles, this line crossing the line of the Frisco a few miles south of Rogers. A



through route is therefore afforded to all points on the Kansas City & Memphis in connection with the Frisco to Rogers and the Kansas City & Memphis beyond. Siloam Springs, the extreme southwestern point on this through route, is also a junction point with the Kansas City Southern Railway, which extends almost due south from Kansas City and in connection with the Missouri, Kansas & Texas Railway forms another route from St. Louis to Siloam Springs and, through Siloam Springs, a through route in the reverse direction from the route through Rogers to all points on the Kansas City & Memphis intermediate to Rogers and Fayetteville on the Frisco. In other words, traffic from St. Louis to points on the Kansas City & Memphis may be routed via the Frisco through Rogers, thence southwest via the Kansas City & Memphis or via the Missouri, Kansas & Texas and Kansas City Southern to Siloam Springs, thence northeast via the Kansas City & Memphis to the same destinations. It will therefore be seen that the Kansas City Southern makes the rate to Siloam Springs both from Kansas City and St. Louis, and that route was available before the Kansas City & Memphis was constructed. The Kansas City & Memphis was completed from Rogers to Siloam Springs in 1905 and from Cave Springs to Fayetteville in 1912. Joint rates to Kansas City & Memphis local points were first established by the Kansas City Southern and connections in July, 1909; whereupon the Frisco was requested to participate in the same basis via Rogers, but this the Frisco at first refused to do, and did not do until March 1, 1911. The rates from St. Louis to Siloam Springs in cents per 100 pounds are:

Class-----	1	2	3	4	5	A	B	C	D	E
Rate-----	104	84	69	55	41	45	35	29	26	23

The Frisco local rates from St. Louis to Rogers are:

Class-----	1	2	3	4	5	A	B	C	D	E
Rate-----	96	78	64	50	38	42	32	26	23	20

and the local class rates of the Kansas City & Memphis from Rogers to Siloam Springs, which are made on a distance basis, are:

Class-----	1	2	3	4	5	A	B	C	D	E
Rate-----	38	33	27	23	18	20	17	13	11	8

The increase in class rates to Siloam Springs should the Frisco be permitted to cancel these joint class rates, would therefore be:

Class-----	1	2	3	4	5	A	B	C	D	E
Rate-----	30	27	22	23	15	17	14	10	8	5

The commodity rates to points on the Kansas City & Memphis are, generally speaking, the junction point or Rogers rates extended and blanketed over the line, so that the increase in those rates upon the

proposed cancellation would be in the amount of the local rates from Rogers.

The distance from St. Louis to Siloam Springs via the Frisco and Kansas City & Memphis is 364 miles and via the Kansas City Southern and connections, 461 miles. The distance to Cave Springs on the Kansas City & Memphis between Rogers and Siloam Springs is 343 miles via the Frisco route, and 482 miles in connection with the Kansas City Southern.

At Rogers industries are located upon the tracks both of the Frisco and the Kansas City & Memphis, and these carriers entered into and have since maintained a reciprocal switching arrangement. At Fayetteville there appear to be no industries located on the Kansas City & Memphis which are not also served by the Frisco, and the latter accordingly refused to enter into any arrangement by which traffic entering Fayetteville via the Kansas City & Memphis would be switched by the Frisco to the industry. Thereupon the Kansas City & Memphis provided in its tariffs for store-door delivery; that is, that traffic routed via its line into Fayetteville would be drayed, free of charge to the shipper, to the consignee industry, if located on the rails of the Frisco or at any point off the rails of the Kansas City & Memphis. This drayage service is performed by the Ozark Transfer Company, the stock of which is owned by J. E. and W. B. Felker, purchasing agent and chairman, respectively, of the executive board of the Kansas City & Memphis. This company has no equipment and therefore does not perform the service itself, but engages the Guthrie Transfer Company to do the work, paying it, it is stated, the full allowance received from the railway. So far as the record shows, no allowance for drayage has been made, directly or indirectly, to any shipper or consignee. It is contended on behalf of the Kansas City & Memphis that this free drayage service is necessitated by the comparative disadvantage of location of its station with that of the Frisco to the industrial section of the city.

This store-door delivery tariff appears to be the immediate cause of the action of the Frisco in proposing to cancel its joint rates with the Kansas City & Memphis, although further reasons advanced are that the basis of divisions is unsatisfactory; that the Kansas City & Memphis has indulged in irregular practices in interline settlements; and that the proposed cancellation is justifiable because of the present low scale of rates; it being further pointed out that upon the cancellation there would still be available a reasonably satisfactory through route in connection with the Kansas City Southern through Siloam Springs. The Frisco asserts that its rates to Rogers, the junction point with the Kansas City & Memphis, are controlled or influenced by the rates to Fort Smith, which are made by the St.

Louis, Iron Mountain & Southern Railway, and are, in cents per 100 pounds, as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate .....	110	95	75	59	44	46	39	34	30	25

The distance from St. Louis to Fort Smith is 416 miles. The rates to Rogers are, in cents per 100 pounds, as stated:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate .....	96	78	64	50	38	42	32	28	23	20

for a distance of 334 miles.

The rails of the Kansas City & Memphis, it will be noted, lie between and connect two trunk lines of railway, the Kansas City Southern and the Frisco. It was not built as an outlet for any appreciable volume of heavy tonnage in sight, such as coal and lumber, but, so far as the record shows, merely as such an investment and upon such promise as a sparsely settled locality so situated might hold out. The section which it traverses produces principally fruits, berries, and cattle. From May, 1912, to March, 1913, it interchanged with or received from the Frisco at Rogers 513 cars of all traffic. During the calendar year 1912 the total number of cars interchanged in both directions and moving on through billing was 303. During the 17 months ending May 31, 1913, the Frisco received from this carrier on through billing 200 cars. The Kansas City & Memphis owns and operates 4 locomotives, 5 passenger cars, 5 flat cars, 1 motor car, and 1 caboose. Equipment for through shipments originating on its line, including that for live stock and refrigeration freight, is furnished by the Frisco. It is contended by the Frisco that its service is fully as great on traffic interchanged with the Kansas City & Memphis as on traffic local to its station at Rogers, it being necessary, the Kansas City & Memphis not providing the equipment, for the Frisco to place and remove empty cars employed in the through business.

As we have stated, the present rates to Kansas City & Memphis stations were made by the Kansas City Southern and were not met by the Frisco until about two years later. The rates so established by the Frisco apply, it should be stated, only from competitive points, rates from its local stations being the full combination on Rogers. Assuming the local rates of the Frisco to Rogers to be reasonable, it seems clear that we can not compel that carrier on through traffic to shrink those rates in absorption of the local rates of the Kansas City & Memphis beyond that point; that is, on such traffic to do other than to accept its local rates minus such deductions as might be proper because of the lesser service it performs as a part of a through haul, if it actually performs a lesser service, which seems to be at least doubtful here. Because the Frisco has seen fit voluntarily to absorb

the full charge of the Kansas City & Memphis on commodities heretofore affords no sound basis for an order requiring the continuance of that practice.

We understand that the Frisco participates in joint rates to Fayetteville, although such rates are, as a matter of fact, but seldom used, as traffic ordinarily moves via its own line direct to that point. We do not think that the Frisco should be required to participate in joint rates to its own stations. Nor are we of opinion that joint rates to Kansas City & Memphis stations may not be made higher than to Rogers, its point of interchange with the Kansas City & Memphis. The Frisco should, however, continue to participate in through routes and joint rates to these Kansas City & Memphis local points on a reasonable basis above that applicable to Rogers. This would permit such reasonable increase in such of the present commodity rates as are blanketed from and including Rogers as will give to each carrier a reasonable share of the joint earnings under an equitable basis of divisions. The class rates now grade up from the junction point. Some or all of them may be adjusted in a reasonable grade from Rogers, and the fault, if any, may be in the basis of divisions. Others or all of them may not be properly adjusted in the respect noted. Again, it may be that the full combination on Rogers or joint rates but slightly lower than that combination and divided approximately upon a mileage basis would be excessive because the local rates of the Kansas City & Memphis are too high. As to the details of these matters we shall make no definite finding at this time, but shall give the carriers an opportunity to make such readjustments as they may deem necessary in view of and within the principle herein announced. Pending whatever readjustment of these rates, class and commodity, they may propose, we shall require the present rates to local points on the Kansas City & Memphis, including Siloam Springs, to be maintained. An order will be entered accordingly.

We are making the order herein effective for the usual period of two years, but this will be subject to such modifications as to the amount of the joint rates as the Commission may hereafter deem proper in view of any readjustments that may be proposed by these carriers in accordance with the suggestions herein.

No. 5650.  
CHARLES BECKER, TRADING AS WISCONSIN COAL  
COMPANY,  
v.  
PERE MARQUETTE RAILROAD COMPANY ET AL.

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No. 5650 (Sub-No. 1).  
ELMORE BENJAMIN COAL COMPANY  
v.  
SAME.

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No. 5650 (Sub-No. 2).  
CALLAWAY FUEL COMPANY  
v.  
SAME.

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*Submitted October 18, 1913. Decided December 8, 1913.*

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Complainants contend that they are entitled to free reconsignment of coal at Milwaukee and ask reparation on account of damage suffered as the result of alleged unjustifiable holding of cars at Ludington, including reconsignment and demurrage charges paid on cars detained, as well as tort damages. The complaint also embraces a charge of discrimination, and further alleges that the new tariff, effective February 9, 1913, is unreasonable because of its failure to provide for reconsignment at Milwaukee; *Held*:

1. Complainants were not entitled to free reconsignment at Milwaukee under the tariff of October 2, 1912, but were entitled to reconsignment there at a charge of \$2 per car. The detention of cars at Ludington was unjustifiable and demurrage charges were improperly assessed and must be refunded.
2. With respect to cars which arrived at Ludington before the receipt of passing notice and proper time for giving disposition orders, the charges paid were improperly assessed and should be refunded. There is no evidence upon which to measure damages as to cars on which the notice was sufficient. Damage regarding these lies in the difference between the value of the reconsignment service at Milwaukee and at Ludington. No damages were proved as the result of granting reconsignment to complainants' competitors and denial of the service to complainants.
3. The Commission's jurisdiction to award tort or general damages, as distinguished from rate damages, discussed in *Joyes v. P. R. R. Co.*, 17 I. C. C., 361, and in *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, 23 I. C. C.,

roads—but if the freight is held at Ludington for reconsigning, or is held at our terminals at Milwaukee for reconsigning, our charge will be \$2.

Following a tariff issued September 14, 1912, I. C. C. No. 2990, which canceled entirely a previous free reconsigning privilege at Ludington, the Pere Marquette on October 2, 1912, issued a tariff, I. C. C. No. 2994, effective October 17, which is in the main the subject matter of the present controversy. Although it proved to be ambiguous in its wording, it appears to have been intended by the defendant, first, to eliminate, as far as the Pere Marquette was concerned, any holding and reconsignment of coal at Milwaukee, and to cause such reconsignment as should be afforded by the Pere Marquette on this business to be done at Ludington, at a charge of \$2 per car, unless reconsignment orders were in the hands of the defendant's agent at Ludington prior to the arrival of the cars. The provision in which these objects were sought is rule 5, which reads as follows:

Bituminous coal, carloads, reconsigned at any Pere Marquette station, excepting stations in Indiana and Illinois, will be subject to a reconsigning charge of \$2 per car in addition to the tariff rate from point of origin to final destination. Bituminous coal consigned to Ludington, Mich., or to points west of Ludington, will be reconsigned at that point without additional charge provided the orders for reconsignment are in the hands of the agent at Ludington prior to arrival of the cars. If the orders are not received at Ludington prior to arrival of cars, the charge for reconsigning will be \$2 per car. Car demurrage and switching charges that may have accrued, in accordance with rules and regulations lawfully on file with the Interstate Commerce Commission or state commissions, must be paid or guaranteed before cars are forwarded.

This tariff also contained, as rule 7, the following provision:

Cars will be reconsigned free from terminal yards to customary deliveries, plus switching charges, if any, as provided for in switching tariffs at destination, lawfully on file with the Interstate Commerce Commission or state commissions, also at junction points, to connecting lines, when no through rates are in effect to points on such connecting lines via such junctions.

This latter rule is relied on by the complainants as having established a privilege of free reconsignment at Milwaukee irrespective of the provisions of rule 5, above quoted.

Although tariff I. C. C. No. 2994 under special permission of this Commission took effect on October 17, 1912, the complainants appear to have been afforded reconsignment at Milwaukee until the middle of December. On December 18 the Pere Marquette advised the complainants that thereafter coal should be reconsigned at Ludington. Its letter to the Elmore Benjamin Coal Company of this date reads, in part, as follows:

On account of the increase of eastbound business and the necessity for using our eastbound yard at Milwaukee for handling that traffic, and in order to enable

us to promptly switch the loads to and from our car ferries, it will be impossible for us to hold any coal at Milwaukee, and we are advised by the C., M. & St. P. Railway that they have no facilities at Milwaukee for holding coal.

Commencing at once, therefore, it will be necessary for you to do all your re-consigning of coal coming over our line at Ludington \* \* \*.

From this letter you will understand that no cars can be brought forward to Milwaukee "for beyond" or "hold for orders." The cars must be consigned to their point of final destination.

We have given instructions to Ludington not to forward any more cars to Milwaukee, "hold for orders," and if the cars come forward billed to any point beyond Milwaukee, they will be sent to the point to which they are billed.

We have received notice to this effect to-day from the C., M. & St. P. Railway, who positively refuse to hold any cars in Milwaukee on their terminals for re-consignment.

The notice referred to as having been received by the Pere Marquette from the St. Paul is a letter addressed on December 17 by the station agent of the St. Paul road at Milwaukee to the general agent of the Pere Marquette at that point, reading as follows:

We have received instructions from Mr. E. S. Keeley, vice president of the C., M. & St. P. Railway, to the effect that the C., M. & St. P. Railway Company will not accept cars of coal from your line unless accompanied by billing to final destination, as we are not in a position to hold cars on our tracks subject to reconsignment.

Following this all cars of coal consigned to the complainants were held at Ludington, and the complainants were requested to furnish statements of final destination at that point. This the complainants refused to do, standing on their asserted right to give reconsigning orders only after the coal should have been brought to Milwaukee. The consequence was that while the carrier and the complainants were parleying as to their rights in the matter a large number of cars accumulated at Ludington during the period from December 18, 1912, until January 7, 1913. Prior to the latter date the complainants had addressed an informal complaint to the Commission, and the suggestion was made that they and the carrier arrange for prompt movement of the coal held at Ludington, and that the matter of the charges be submitted to the Commission for its advice. This arrangement was adopted, and the coal held at Ludington was released.

Under date of January 7, 1913, the Pere Marquette issued its tariff, I. C. C. No. 3033, to become effective February 9, 1913, canceling the preceding tariff, I. C. C. No. 2994, of October 2. This tariff was designed to remove the ambiguity in the former one, and to make it clear that there should be no reconsignment at Milwaukee. It contained in section 5 the express stipulation that no reconsignment of bituminous coal would be made at Milwaukee, Manitowoc, or Kewaunee, Wis. It also omitted the last portion of section 7 of the preceding tariff, respecting free reconsignment at junction points,

under which the complainants had contended that they were entitled to free reconsignment at Milwaukee. Application was made to the Commission for the suspension of this tariff, but the application was denied. Subsequently the shippers filed the formal complaint which is the subject of this proceeding.

Complainants contend that they were entitled to free reconsignment at Milwaukee under section 7 of the tariff of October 2, I. C. C. 2994, in force during the controversy. They also challenge the reasonableness of the rules of this tariff as construed, compelling the reconsignment of their coal at Ludington at a charge of \$2 per car unless reconsigning orders were given at Ludington prior to the arrival of the cars at that point. This, of course, includes a protest against the new tariff of January 7, which reiterated and made more explicit the rules of the preceding one. Complainants also ask reparation for the damages suffered as the result of the alleged unjustifiable holding of their coal at Ludington, including reconsignment and demurrage charges paid on the cars detained, as well as the tort damages alleged to have been caused by the detention and the changed conditions of the market for the coal. The complaint also embraces a charge of discrimination. It is alleged and evidence is offered that during the period of controversy the defendant, while denying free reconsignment to the complainants, brought certain cars of coal owned by the complainants' competitors to Milwaukee and there held them for free reconsignment. This charge is used in complainants' brief principally in connection with the attack upon the reasonableness of the rules. There is no allegation of specific damage suffered by the complainants as a result of the discrimination charged, nor is there in the record any proof of this kind of damage.

Complainants' contention that they were entitled to free reconsignment at Milwaukee under rule 7 of the tariff of October 2, 1912, we are of opinion, is not well founded. The first clause of the rule—

Cars will be reconsigned free from terminal yards to customary deliveries, plus switching charges, if any, as provided for in switching tariffs at destination lawfully on file with the Interstate Commerce Commission or state commissions \* \* \*

is not applicable to the transportation in the instant case. This clause seems to concern the service at the ultimate destination, the point of delivery to the consignee, and Milwaukee is not such a destination of the traffic in question. We are persuaded to this view by consideration of the statement as to "switching charges \* \* \* at destination." This meaning is even more clearly evidenced by the use of the term "customary deliveries," which, obviously, means deliveries to industries and not, as in the present case, delivery to a connecting carrier.



We are further of opinion that the second clause in rule 7, which provides for free reconsignment—

at junction points to connecting lines where no through rates are in effect to points on such connecting lines via such junctions—

is also inapplicable because through rates are in effect to the destinations of the shipments in question. While it is true that there are no joint through rates published by the carriers for shipments to the various destinations to which this traffic moves, and beyond Milwaukee it pays the full local rate of the outbound carrier, it does move on a through rate, namely, the proportional rate to Milwaukee. A proportional rate is from its very nature nothing else but a part of a through rate. It therefore appears that complainants were not entitled under the second portion of rule 7 to free reconsignment at Milwaukee.

It is also argued in complainants' brief that they were entitled to free reconsignment at Milwaukee because the rate of \$1.90, while styled a proportional rate, is in effect a local rate for transportation to Milwaukee and should entitle the complainants to delivery there of their shipments. Under this premise the diversion would be merely a reshipment, and there would be no excuse for levying a reconsignment charge. The premise is based on the argument that the difference between the proportional rate of \$1.90 and the local rate of \$2.50 is unjust and unreasonable. We do not understand that the reasonableness of these rates is at issue in this case. This being so, the tariff must control, and under the tariff the lower rate sought by the complaints is undeniably a proportional rate.

We have next to consider whether the complainants were reasonably entitled to any service of reconsignment at Milwaukee; and if so, what is a reasonable rule for such reconsignment.

We have heretofore taken occasion, while pointing out the abuses of which reconsignment is susceptible, to suggest the many advantages and beneficial results from the economic and transportation standpoint of this practice. *Detroit Traffic Asso. v. L. S. & M. S. Ry. Co.*, 21 I. C. C., 257, 259. As observed in that case the primary advantages are found in the increase in the fluidity and regularity of the movement of commodities, the important elimination of economic waste in the reduction of the handling of goods between the producer and the consumer, the increase in celerity of movement, and the facilitation of the direction of commodities to the point of most active demand. Our observations in that case were directed to conditions similar in the main to those of the present case. As there indicated, reconsignment has become a very extensive practice.

In *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 114, it was observed that under section 15 of the act, as amended in 1906, 28 I. C. C.

this Commission is invested with full authority over interstate rates and whatever regulations and practices enter into those rates and determine their value and availability to individuals or communities. We held that under the facts there considered reconsignment and diversion on the basis of the through rate from the point of origin to new destination, with a fair charge for the extra services performed, are reasonable practices, that the denial thereof is unreasonable and unlawful, and that this Commission has power, in its discretion, to require their establishment.

The defendant here is not seeking to deny the complainants any reconsignment, but contends that this service should be afforded at Ludington rather than at Milwaukee, and that the complainants should pay for it a charge of \$2 per car unless reconsigning orders are in the hands of its agent at Ludington prior to the arrival of the cars. The complainants, on the other hand, seek free reconsignment and at Milwaukee.

The objections to the defendant's position that reconsignment should be effected at Ludington are, first, that its rate, the proportional rate of \$1.90, is for a haul to Milwaukee, even though it is not expected to make actual delivery there. This is the destination as far as the movement of the Pere Marquette is concerned. As was pointed out in *Detroit Traffic Asso. v. L. S. & M. S. Ry. Co.*, *supra*, terminal reconsignment, involving holding of cars for reconsigning orders, as distinguished from reconsignment while cars are actually in transit, involves reconsignment upon arrival at the original destination. A carrier may as a matter of convenience, when its terminal tracks are congested, hold cars at some point short of destination, provided such a course involves no disadvantage to the consignee. Although the Pere Marquette appears to have more extensive terminal facilities at Ludington than at Milwaukee and the haul between these two points is by car ferries rather than the usual transit over rails, it surely may not be contended that for the present purposes Ludington is the terminal rather than Milwaukee. The situation in this regard would seem to be no different than if the transit were by all rail. The proof is that reconsignment at Ludington does cause the complainants great disadvantage and inconvenience. It is argued that because of the long delays in transit, the fact that cars do not move from the mines to Milwaukee in the order in which they are shipped, discrepancies in weight caused by losses, accidental and otherwise, during transit, the deterioration of certain grades of the coal from exposure to the weather during the delays, it is necessary for the complainants, in order effectively to reconsign the coal, to make some inspection before the reconsignment orders are issued. This facility they have apparently enjoyed in the past, it having been

their practice to visit the Pere Marquette tracks at Milwaukee and inspect the coal before reconsigning it. While it is true that in general inspection appears not to be specifically provided for in reconsigning tariffs, it would seem that it may fairly be regarded under appropriate circumstances as an incident of the reconsigning service when it involves holding of cars. The complainants contend that to expect them to seek this facility at Ludington, across Lake Michigan, a hundred miles short of Milwaukee, where their business is conducted, is, especially in view of the roundabout and slow means of communication between the two cities, unreasonable. In this we are of the opinion their position is well taken.

There is also evidence that reconsignment, if afforded at Ludington, would not be an adequate or satisfactory service. While cars sometimes are brought from Ludington to Milwaukee in from one to three or four days, the records of the movement of the cars in controversy indicate that in a number of instances the time consumed was much longer, amounting in some cases to twelve or fifteen days. At other periods delays were even greater. Under these circumstances the complainants, after having elected to fill orders by using reconsigning directions for coal at Ludington, might suffer considerable embarrassment in their business by failure of prompt deliveries to their customers. Such complication, it would seem, would be avoided by deferring reconsignment until the coal actually arrives in Milwaukee.

The defendant's position is that while the other roads in Milwaukee, notably the Chicago, Milwaukee & St. Paul, have large terminals, and so should perform the service there, its facilities in Milwaukee are inadequate. It states that it has ample facilities at Ludington, and that, consequently, the service should be there given. In response to this suggestion it is to be said that while the traffic manager of the Pere Marquette testified generally that under present conditions, affording reconsignment of the bituminous coal in question would cause congestion on the interchange tracks at Milwaukee, there is no substantial evidence that serious congestion has resulted in the past, even though it appears to be the fact that all the holding of cars for reconsigning at Milwaukee was done on the interchange tracks of the Pere Marquette. The defendant's contention, therefore, that the practice is not a feasible one on its tracks in Milwaukee appears to be without adequate foundation in the record.

The defendant urges as another reason why reconsignment should be done at Ludington that it will thus be afforded opportunity to avoid out-of-line hauls and the payment of intermediate switching charges. For example, while the Pere Marquette makes a direct connection with the Chicago & North Western from its ferry slip at

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The defendant urges as another reason why reconsignment should be done at Ludington that it will thus be afforded opportunity to avoid out-of-line hauls and the payment of intermediate switching charges. For example, while the Pere Marquette makes a direct connection with the Chicago & North Western from its ferry slip at

Manitowoc, Wis., interchange with the North Western, if the traffic is carried through Milwaukee, involves a switching movement by the St. Paul road, the charge for which, it is testified, is absorbed by the Pere Marquette. In this connection it is to be noted that the complainants protest against the Pere Marquette's practice of the past of routing cars through Manitowoc rather than Milwaukee when a saving to it was thus effected. They aver that the defendant has sometimes selected the North Western when complainants desired another delivering carrier, and argue that if defendant carries in its tariff a rate for a movement via Milwaukee it is obliged actually to move the traffic through that gateway, whether or not it is less profitable for it to do so than to send it through another one. Under the act the shipper is given the right to designate the movement of his shipment.

Although it has not been specifically so argued, the contract between the Pere Marquette and the St. Paul road for the operation of the interchange tracks at Milwaukee may be deemed to raise a further question as to the feasibility of reconsignment by the Pere Marquette at Milwaukee. This contract, as indicated above, provides in general for the performance of the service of switching the cars from the Pere Marquette's ferries to the interchange tracks and thence to the tracks of the St. Paul road by the power and employees of the St. Paul road employed for this purpose in behalf of the Pere Marquette. Article first of this contract reads as follows:

That the place where the St. Paul Company shall receive from or deliver to the Marquette Company any and all cars referred to in this agreement is the railroad track (hereinafter called connecting track) which the Marquette Company has constructed from its ferry slip or dock in the city of Milwaukee to a connection with the main-line tracks of the Chicago division of the St. Paul Company; and that (except as provided in section seventh hereof) the duties and liabilities of each party as a common carrier of property in transit, shall attach to any car or cars and contents run onto said connecting track for delivery to it, so soon as such car or cars is or are run onto said connecting track, and whether any notice or shipping directions are or are not given.

This is interpreted to mean that as soon as a car is taken off the ferry and comes to rest on the interchange track it is regarded as in the possession of the St. Paul road, and is, therefore, a St. Paul car rather than a Pere Marquette car. If this provision is to be regarded as permanently defining the conditions of operation of this track, it would seem that there would be no opportunity for holding and reconsigning of cars by the Pere Marquette, and that such service would necessarily have to be performed by the St. Paul road. We are of opinion, however, that this provision may not properly prevail to this effect. Reconsigning is a service naturally and normally to be afforded not by the outbound but by the inbound carrier, and

we believe this should be the practice in the instant case. At the inception of the present controversy the St. Paul road refused to receive cars upon which a final destination had not been given before delivery to it by the Pere Marquette, and, in our opinion, such refusal was justified, apart from other considerations, by the fact that its reconsigning tariff, I. C. C. No. B-2507, properly interpreted, would not permit it to reassign the cars which are the subject of the present complaint. Cars put upon the interchange track at Milwaukee may be regarded as "in transit on the rails of the Chicago, Milwaukee & St. Paul Railway" only by the fiction provided for in the contract. We can not regard this contract as a valid objection to the Pere Marquette's affording the service. Reconsignment is a service which the carrier may, under the act to regulate commerce, be properly expected to furnish. The power of Congress to regulate interstate commerce is not hampered by contracts made in regard to such matters by individuals, but contracts of that nature are made subject to the possibility that even if valid when made Congress may by exercising its power render them invalid. *L. & N. R. R. Co. v. Mottley*, 219 U. S., 467. A corporation can not disable itself by contract from the performance of public duties which it has undertaken, and thereby make public accommodation or convenience subservient to its private interests. *Gibbs v. Consolidated Gas Co. of Baltimore*, 130 U. S., 396.

It may also be noted that the contract in question, which is dated April 8, 1901, is for a term of five years and contains no provision for renewal. While it appears to be treated as in effect by both parties to it, it is no longer, of course, a contract for a term, and may be terminated by either party at will.

Recurring to the suggestion that reconsignment at Milwaukee may cause congestion through possible abuses in the matter of detention of cars there, it may be said, as we observed in *Detroit Traffic Asso. v. L. S. & M. S. Ry. Co.*, *supra*, that the question of detention is one that must be worked out by itself, and it is not reasonable that the advantages of reconsignment should be thrown away in order to avoid abuses that can be remedied in other ways.

This brings us to the question of the charge for the service. Although there are exceptions, it seems to be the general practice that, whether reconsignment itself is free or at a charge, cars held for reconsignment are subject to the usual demurrage or car-service charges after they have been held past the free time allowed by demurrage rules; and we are of opinion that, whether or not reconsignment itself is charged for, if cars are held proper demurrage charges may and should apply. Moreover, we held in the *Detroit case*, above

cited, that reconsignment involving holding of cars is a service involving extra labor in handling and clerical work on the part of the carrier and that it is an established principle that the carrier is entitled to repayment of the cost of the service, together with a reasonable profit. In that case we held that a reasonable charge for the service was \$2 per car. We are of opinion that in the instant case if the reconsignment afforded involves holding of cars the same charge, \$2 per car, with the usual demurrage charges after the free time, should be paid.

In the *Detroit Reconsigning case*, 25 I. C. C., 392, in which we had occasion again to consider the reconsigning service at Detroit, our attention was called to the practice which had grown up on the part of one of the lines entering Detroit of notifying consignees of the arrival of their cars at a point outside of Detroit, thus enabling the consignee to give a reconsigning order prior to the arrival of the car at Detroit. We commended this practice, and held that it would be unreasonable and an unjust burden on the traffic for the carriers to exact the reconsigning charge without undertaking the duty of giving such a notice to consignees, thus affording them an opportunity of giving disposition orders before the arrival of the cars at their destination. We stated, on the other hand, that if the coal dealers, having such notice, were not able to give their reconsigning orders before the cars reached Detroit, it was entirely just and reasonable that they should pay the charge for the reconsigning service. We believe that this rule properly may be applied in the instant case. The Pere Marquette appears to have established the practice of giving a passing notice at Toledo regarding reconsignment at Ludington, although provision for such notice is not incorporated in its tariff. We are of opinion that such provision should be made a part of its tariff to the effect that if after receipt of such passing notice the shippers fail to give disposition orders before the cars reach Milwaukee, they shall be charged for the service \$2 per car; otherwise the service is to be free. This rule, we believe, is justified both as affording a proper compensation when reconsignment involves extra service by the carriers, and also as tending to avoid congestion at the terminal, by inducing the prompt giving of disposition orders. While there is controversy as to the sufficiency of a passing notice at Toledo for reconsignment at Ludington, it would seem that such notice would be sufficient if the service were afforded at Milwaukee. If the defendant, for its own convenience on account of congestion at Milwaukee, or for any other reason, holds cars at Ludington, that is a matter for which it can not reasonably charge the shipper.



The complainants allege that denial of free reconsignment at Milwaukee would constitute unjust discrimination against Milwaukee in view of the privilege enjoyed at other competing centers, notably Chicago. We find that the service there afforded is to some degree the result of the rate situation, coal moving in on local and terminal rather than on proportional rates as at Milwaukee. In such a situation there can be no reconsignment as the term is properly understood. It may also be observed that reconsigning tariffs applicable to the coal traffic moving through Chicago under through rates show some variety of provision, some carriers allowing reconsignment free, with certain holding privileges, while other carriers make a charge unless the reconsigning orders are given before the coal reaches Chicago. This variety in the rules appears in the tariffs at other points, and suggests the necessity and advantage of more uniform rules than now prevail.

We have now left for consideration the complainants' request for reparation. As indicated above, they ask for a refund of the reconsignment charges and demurrage charges paid on their cars at Ludington, and also tort or general damages as distinguished from rate damages, alleged to have been suffered because of the detention of the cars at Ludington and the changed conditions of the market.

Considering these questions in the reverse order, it is to be observed that as to the general damages the defendant raises the question of the Commission's jurisdiction, and at the hearing made no showing regarding the damages, but reserved the right to apply for further hearings if the Commission should take jurisdiction. The question of jurisdiction we have discussed in *Joynes v. P. R. R. Co.*, 17 I. C. C., 361, and more recently in *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, 23 I. C. C., 186. In the present case we shall do no more than to refer to our conclusions in these cases, since apart from the jurisdictional question we believe that here there should be no award of damages of this nature.

This conclusion we rest on the general principle of the law of torts that one who suffers a tort injury must use reasonable diligence to avoid or minimize his loss. It appears from the record that the complainants had some notice of the accumulation of their cars at Ludington, and were at least put upon notice as to the detention. It seems, therefore, that when the defendant took the position that the cars should not be moved from Ludington until reconsigning orders were given there, the complainants, even though they regarded this position unjustifiable, might have temporarily acceded, given the reconsigning orders, sold or delivered their coal, and so avoided the loss which is alleged to have resulted, saving, at the same time, their right to have the question of the lawfulness of the defendants'

conduct determined by this Commission. The obligation of reasonable diligence to avoid loss, we believe, required such a course on their part, and in its absence we are of opinion that we may not properly award compensation for such losses, if any, as actually resulted from the detention.

This principle conceivably might be extended to defeat complainants' claim for refund of the demurrage charges. We believe, however, that this claim more properly should be determined in the light of the principles stated by this Commission as specifically applicable to contests as to the lawfulness of demurrage charges exacted under circumstances similar to those of the instant case. It is to be said, first, that we find in accordance with the views previously expressed herein that the detention of complainants' cars at Ludington during the period of controversy was unjustifiable. Without passing on the much controverted issue as to whether the Pere Marquette had in the past reconsigned cars at Milwaukee, which, from all the evidence, seems, especially in view of the defendant's declarations contained in the letters of its agent to the complainants in September and December, 1912, at least an open question, we are of opinion that under rule 5 and the general provisions of the defendant's reconsigning tariff I. C. C. 2994, the complainants were entitled to the reconsigning service at Milwaukee, although they would have been compelled to pay for it the charge of \$2. Defendant argues that this tariff did not permit reconsigning at Milwaukee, because under the rules of this Commission it would have been necessary for the Chicago, Milwaukee & St. Paul road to have been made a party to the tariff, since all the reconsigning was done by the St. Paul employees. Regarding the service as performed by the employees of the St. Paul road as agents of and in behalf of the Pere Marquette, we fail to perceive that there would be any such necessity. Moreover, for the reasons indicated above, we are of opinion that the contract between the two roads would not have been an obstacle to the performance of the service at Milwaukee by, or in the name of, the Pere Marquette road. The complainants' demand seems to have been that the cars be brought to Milwaukee for reconsignment, and also that they be reconsigned there free under rule 7 of the tariff. There is some evidence, however, to the effect that they demanded merely that the cars be brought to Milwaukee before the disposition orders should be given. This latter demand we find to have been warranted, and that the defendant's holding of the cars at Ludington short of destination was unjustifiable. We have held that in case of dispute as to the reasonableness of established rates the complainant is not entitled to a refund of demurrage charges which have accrued because of his refusal to accept delivery pending the dispute. *Coombs v.*

*O. M. & St. P. Ry. Co.*, 13 I. C. C., 192, 195. If, however, the delivering carrier demands more than the lawfully established rate the consignee is released from the obligation to pay demurrage during the pendency of the dispute, and the Commission may award reparation to the amount of the demurrage charges so paid. *Porter v. St. L. & S. F. R. R. Co.*, 15 I. C. C., 1, 5. We are of opinion that the defendant's wrong in compelling reconsignment at Ludington is analogous to and falls within the principle of the case of the attempted exaction of more than the lawful rate. While there was tariff authority for the collection of \$2 for reconsigning at Ludington, we are of opinion, as indicated above, that under the tariff the complainants would have been entitled, on payment of the charge, to the performance of the service at Milwaukee. This latter facility, reconsignment at Milwaukee, defendant denied. This wrong of the refusal of a facility lawfully demandable under the tariff falls, we believe, within the principle of the rule as to the exaction of more than the lawful rate, and we find, consequently, that the demurrage charges were improperly assessed and must be refunded.

We find the adjudication of the complainants' claim for refund of the reconsigning charges paid a difficult matter. We have held above that the reasonable rule is that reconsignment should be afforded at Milwaukee, but free of charge only if disposition orders are given prior to the arrival of the cars, conditioned upon passing notice sufficiently in advance to permit the shipper to avoid the charge of \$2 by the prompt giving of reconsignment orders. There is evidence that in the cases of some of the cars on which charges were paid at Ludington, the passing notice given from Toledo did not reach complainants in sufficient time to have permitted complainants, even though they had acted with promptness, to have given the reconsigning orders at Ludington prior to the arrival of the cars. With respect to cars which arrived at Ludington in less than this time, we are of opinion that the impossibility, irrespective of what may have been the complainants' conduct, of avoiding the charge is, under our conclusion as to the reasonable rule, sufficient ground to find that charges paid under the circumstances mentioned were improperly assessed and should be refunded, and we do so find.

As to cars on which the notice was sufficient, however, we can make no such finding. Under our holding as to the reasonable rule, the condition precedent to free reconsignment is the giving of the reconsigning order prior to the arrival of the car. While under the peculiar circumstances of the case our finding in this regard can be only an assumption, it does seem evident from the record that had the cars been moved by the defendant through to Milwaukee without holding at Ludington the complainants would not have given disposi-

tion orders prior to their arrival. Any other assumption, we believe, is contradicted by the history of the complainants' demand and their present contention. According to the testimony, they had in the past never given orders prior to the arrival of the cars, and after the present controversy arose their demand was that the cars be brought to Milwaukee and held awaiting the giving of orders. In this view they would have paid the charge at Milwaukee under the reasonable rule now stated. Their damage, consequently, lies in the difference between the value of the reconsignment service to them at Milwaukee and at Ludington. We have no evidence upon which to measure such damage, and are, consequently, unable to make a finding in this regard.

There still remains another feature of the complaint, which involves a question of damages, namely, the charge of discrimination by the defendant in bringing coal to Milwaukee for competitors of the complainants and holding it there for reconsignment while denying the service to the complainants. The defense to this charge is that no discrimination has been proven, and that the arrangement under which coal of the other companies was brought to Milwaukee was a legitimate one. It is said, moreover, that if coal was held at Milwaukee for reconsignment the Pere Marquette had nothing to do with the transaction. These issues are not for determination in this particular proceeding, but should receive other consideration. If discrimination of the kind charged is to be regarded as established, it does not go, as the complainants appear to argue, to the reasonableness of the reconsigning rules themselves. This leaves the question of reparation. The complainants have not definitely alleged specific damage suffered as a result of the discrimination charged. Assuming, however, that the issue of damage is raised by them with sufficient clearness, we do not find supporting proof of damage attributable to this particular alleged injury. Under the law there is no fixed measure of damages in favor of a shipper compelled to pay a higher rate than his competitor, and for private wrongs for which private injury is inflicted the compensation recoverable by the injured shipper is measured by the damages actually sustained and proved. *P. R. R. Co. v. International Coal Mining Co.*, 230 U. S. 184. In the present case we find no damages proved as a result of the alleged injury, and consequently no reparation can be awarded in this regard.

Complainants and defendant should submit to the Commission an agreed statement of fact showing the amount of reparation due in accordance with these findings.

An order will be entered in accordance with our conclusions stated above.

No. 3447.

FAIRMONT CREAMERY COMPANY.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

*Submitted November 3, 1911. Decided December 3, 1913.*

Rates for the transportation of fuel oil in carloads from Sugar Creek, Mo., to Omaha, Crete, and Grand Island, Nebr., found to be unreasonable. Reasonable rates prescribed for the future.

*Hainer & Smith* and *E. J. McVann* for complainant.

*D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*J. C. Jeffery, H. G. Herbel, and H. J. Campbell* for Missouri Pacific Railway Company.

*L. J. Eastin* for St. Joseph & Grand Island Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of dairy products, with principal place of business at Omaha, Nebr. In its complaint it alleges that defendants' rates for the transportation of fuel oil in tank cars from Sugar Creek, Mo., to Omaha, Crete, and Grand Island, Nebr., are unreasonable and unjustly discriminatory. In the complaint reparation was asked, but at the hearing complainant waived reparation, stating that it was interested only in the establishment of a reasonable rate for the future.

Complainant's plants are located at Omaha, Crete, and Grand Island, and the power necessary to operate them is obtained through the burning of fuel oil as a steam-producing agency. During the year 1910 complainant used at the three stations named more than 1,000,000 gallons of fuel oil.

The rates per 100 pounds from Sugar Creek, the distances, and the revenue per ton-mile are as follows:

To—	Rate.	Distance.	Revenue per ton-mile.
	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>
Omaha.....	13	204	12.74
Crete.....	19	214	17.75
Grand Island.....	29.1	324	17.96

Complainant contends that the rates to Omaha and Crete should not exceed 7 cents and to Grand Island 10½ cents. Comparisons are made with rates applicable to like traffic between points in central freight association and southern territories, and from Buffalo, N. Y., Coffeyville, Kans., and Lander, Wyo., to Omaha. A considerable portion of complainant's testimony was devoted to a comparison of the rates on fuel oil with the rates on coal, and exhibits were filed showing that as compared with the rates on coal the rates on fuel oil from Sugar Creek to Omaha, Crete, and Grand Island are relatively higher than in eastern territories. While fuel oil may, to a certain extent, be used in place of coal, the circumstances and conditions surrounding the movement of these commodities are so dissimilar that comparisons of this nature are not of great value. It is also well known that the general level of rates east of the Mississippi River is lower than that west thereof.

Sugar Creek is on the Atchison, Topeka & Santa Fe and the Kansas City Southern railways, and it is necessary for the lines north of Kansas City to absorb the switching charges of the lines which haul the traffic from Sugar Creek to Kansas City, a distance of about 10 miles. Defendants called attention to the fact that tank cars used in transportation of this commodity must be returned empty from the destinations.

Petroleum and its products are rated fifth class in the western classification. The fifth-class rate from Sugar Creek to Omaha is 16 cents, while the commodity rate on petroleum and its products is 13 cents. The commodity rate on petroleum and its products from Sugar Creek to Crete is the same as the fifth-class rate, or 19 cents. The commodity rate of 29.1 cents from Sugar Creek to Grand Island is equal to the combination of a commodity rate of 13 cents to Lincoln, Nebr., plus a commodity rate of 16.1 cents beyond.

The tendency of the Commission in recent cases has been to classify the various petroleum products to a limited extent and to establish lower rates on such low-grade products as fuel oil, road oil, etc., than are contemporaneously maintained on the higher grade of products, such as gasoline, kerosene, naphtha, etc. In *National Refining Co. v. M., K. & T. Ry. Co.*, 23 I. C. C., 527, it appeared that the carriers maintained from Muskogee, Okla., to Coffeyville, Kans., a rate of 17 cents on refined oil, and at various times during the period covered by the complaint rates of 10, 12, and 15 cents on crude oil. In that case the Commission decided that the rate for the transportation of the cheap by-product known as the light ends of petroleum oil ought not to exceed the rate on crude oil by more than 2 cents per 100 pounds.

In *Central Commercial Co. v. A., T. & S. F. Ry. Co.*, 26 I. C. C., 373, it appeared that the defendants maintained a rate of 33.1 cents

per 100 pounds for the transportation of petroleum and its products from Coffeyville, Kans., to Hastings, Nebr., a distance of 480 miles. In its general application to the products of petroleum this rate had been under attack in *National Refining Co. v. M. P. Ry. Co.*, 24 I. C. C., 315, and was not found to be unreasonable. In the *Central Commercial case*, *supra*, however, the Commission held that the rate of 33.1 cents as applied to petroleum residuum or road oil was unreasonable and unjustly discriminatory as compared with rates to certain other points to the extent that it exceeded 21 cents. This residuum or road oil was also referred to in the record as fuel oil or fluxing oil, and we understand that it is the same commodity which is involved in the present case.

In *Acme Cement Plaster Co. v. St. L. & S. F. R. R. Co.*, 22 I. C. C., 283, the Commission found that defendants' former rates of 19 and 22.5 cents per 100 pounds on fuel oil from Sapulpa, Okla., to Acme, Tex., a distance of 292 miles, were unreasonable to the extent that they exceeded the subsequently established rate of 15 cents, which was a blanket rate extending to points as far distant from Sapulpa as Sabine, Tex., 566 miles.

The rates here in question do not appear to bear any definite relation one to the other. As has been noted, the rate to Omaha is 3 cents less than the fifth-class rate, the rate to Crete is the same as the fifth-class rate, while the rate to Grand Island, which is also less than the fifth-class rate, is made up of the combination of commodity rates on petroleum and its products to Lincoln and beyond.

Upon consideration of all the facts of record, we are of opinion that the rates in issue are unreasonable as applied to the transportation of fuel oil, and that defendants should be required to establish and maintain for the future rates for the transportation of fuel oil in carloads which shall not exceed 11 cents per 100 pounds to Omaha, 12.5 cents per 100 pounds to Crete, and 19 cents per 100 pounds to Grand Island.

It will be noted that the rates prescribed for the future do not bear the same relationship one to another as the present rates on petroleum products, but this is due to the fact that the present rates bear no logical relation one to another. The rates above prescribed will give the carriers substantially the same ton-mile earnings to Crete and Grand Island, and by reference to the present rates it will be noted that they now receive approximately the same ton-mile earnings for the haul to both points.

Although petroleum and its products are rated fifth class under the western classification, it has been the practice of carriers in this territory to fix commodity rates lower than the class rates between points where there is any considerable movement of petroleum, and

these commodity rates have come to be the normal rates, in comparison with which other rates for the transportation of petroleum oil and its products in this territory are to be measured. Therefore, in establishing the new rate to Crete, which involves a greater relative reduction than in the rate to Omaha, we have considered that the fifth-class rate is not the normal basis for petroleum and its products in the territory involved.

An appropriate order will be entered.



No. 5218.

OMAHA GRAIN EXCHANGE

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted July 25, 1913. Decided December 8, 1913.*

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It appearing that certain irregularities and discriminations alleged to exist in connection with the ownership and operation of grain elevators by the carriers serving Kansas City have been removed since the present complaint was filed; upon motion of defendants, concurred in by complainant, who is satisfied with the proposed basis of future operation by lease, details of which have been filed with the Commission, complaint dismissed without prejudice to any future investigation by the Commission into any or all phases of these matters either upon its own motion or upon complaint.

*Edward P. Smith and C. D. Sturtevant* for complainant.

*Herbert S. Hadley* for defendants.

*Henry G. Herbel* for Missouri Pacific Railway Company.

*J. M. Souby* for Kansas City Southern Railway Company.

*N. S. Brown* for Wabash Railroad Company and receivers.

*O. W. Dynes* for Chicago, Milwaukee & St. Paul Railroad Company.

*W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company.

*H. G. Wilson* for Board of Trade of Kansas City, interveners.



## REPORT OF THE COMMISSION.

*CLEMENTS, Commissioner:*

The complaint in this case alleges, in substance, that certain of complainant's members, who have, at their own expense, built terminal elevators for the handling of grain at Omaha, South Omaha, Nebr., and Council Bluffs, Iowa, are being unlawfully discriminated against in favor of dealers in Kansas City, Mo., because of the practice of the defendant carriers in erecting, or causing to be erected, elevators at Kansas City and either leasing them to dealers there at an unduly low rental or operating them themselves or through subsidiary corporations, and in giving certain free or preferred services to shippers using them and shipping out over the owning carriers' lines. In case of the subsidiary companies the carriers make up any deficit in operation. This practice is alleged by complainant to be not only unduly discriminatory, but to be otherwise unlawful, and in effect the giving of rebates to the Kansas City lessees, users, and shippers. The prayer of the complaint is that the defendants be required either to operate their Kansas City elevators themselves, without discrimination in charges or services between shippers, or to dispose of their interests therein. The shipping interests of Kansas City have intervened.

At the hearing it was shown by the defendant carriers that subsequent to the filing of the complaint an appraisal of these elevators had been made by three disinterested elevator engineers and contractors and that they have been or will be leased to regular elevator companies at a rental based upon that valuation, except those owned by the Wabash and Kansas City Southern railways, which will be operated by those carriers direct, without the intervention of any subsidiary operating companies. These leases have been filed with the Commission.

The proposed basis of future operation is said by complainant to be satisfactory to it and to remove its cause of complaint, and it has therefore joined the defendants in their request that the complaint be dismissed.

An order in dismissal of the complaint will be entered, subject to any future investigation which the Commission may desire to make upon any phase of these matters either on its own initiative or upon complaint.

23 I. C. C.

**INVESTIGATION AND SUSPENSION DOCKET No. 329.**  
**MOLASSES RATES FROM MOBILE, ALA.**

*Submitted December 10, 1913. Decided January 5, 1914.*

Proposed rate of 15 cents per 100 pounds on imported blackstrap molasses from Mobile, Ala., to East St. Louis, Ill., and St. Louis, Mo., not having been shown to be in violation of section 3 of the act, the suspension of that rate will be vacated upon its republication in the form suggested by the Commission.

*R. V. Fletcher* for Illinois Central Railroad Company.

*Sydney R. Prince* for Mobile & Ohio Railroad Company.

*Cassoday, Butler, Lamb & Foster* for feed manufacturers.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

By order entered October 24, 1913, the Commission suspended from November 8, 1913, until March 7, 1914, item 2 on page 3 of supplement 3 to Washburn's tariff I. C. C. No. 114. The suspended item publishes a rate of 15 cents per 100 pounds on "molasses, blackstrap, low grade, in tank cars (when imported from Cuba, unloaded into storage tanks and reshipped from storage tanks), estimated weight 11.7 pounds per gallon, agreed to be of value of 8 cents or less per gallon, c. l. minimum weight capacity of tank," from Mobile, Ala., to East St. Louis, Ill., and St. Louis, Mo., via the Mobile & Ohio Railroad. The suspension was made upon protest by the Illinois Central Railroad Company and the Louisville & Nashville Railroad Company. Hereinafter the lines just mentioned will be referred to as the protestants and the Mobile & Ohio as the respondent. The material allegations of the protest were as follows:

1. That the proposed rate of 15 cents is too low for the service rendered and will inevitably compel the reduction of rates upon this article via the lines of the protestants, not only from New Orleans to St. Louis and East St. Louis, but from New Orleans to Ohio River crossings and points beyond, particularly to Owensboro, Ky., Evansville, Ind., Louisville, Ky., Cincinnati, Ohio, Chicago, Ill., Detroit, Mich., and other points; that the carriers serving these cities from New Orleans already receive inadequate income from their business and the reduction in rates from New Orleans, which would follow the establishment of the 15-cent rate from Mobile, would subject such carriers to unnecessary loss in revenue and compel them to impose an improper burden upon shippers of other commodities.

2. That the effect of the proposed rate published by the respondent will be to discriminate in favor of one shipper, C. U. Snyder & Company, of Chicago; that no other person will be able to derive any advantage from this rate; that there now exist at the port of Mobile no tank facilities suitable to receive this product from tank ships; that under the conditions affecting the movement of this traffic it can be handled only in tank ships and in huge stationary tanks upon the docks at the ports; and that the only tank which will be available at Mobile will be the one which will be built by C. U. Snyder & Company.

3. That the effect of this rate will be to discriminate against and prevent the shipment of this commodity from New Orleans, unless protestants and other New Orleans lines reduce their rates to correspond with the unreasonably low rate which is the subject of this investigation.

In addition to the formal protest above described, a number of letters were received from Louisiana shippers, protesting against the 15-cent rate from Mobile to St. Louis, and from shippers who propose to purchase this traffic at Mobile, requesting that the rate be permitted to become effective at the earliest possible date. A hearing has been had, and the material facts of record may be summarized as follows:

The manufacture of animal foods in the United States is an industry of somewhat recent origin. This industry uses immense quantities of the lowest grade of molasses, commonly known as blackstrap. In the United States there are but two sources of supply of this commodity—that produced in connection with the cane-sugar industry, which comes almost entirely from Louisiana plantations, and that produced in connection with the beet-sugar industry, which comes for the most part from Michigan, Wisconsin, and Colorado. The manufacture of animal foods has expanded so rapidly that within the past couple of years many of the food manufacturers have found it necessary to close their factories from time to time, because the domestic supply of blackstrap has been insufficient to meet the requirements of the trade. It is stated of record that the requirements of the animal-food manufacturers for the year 1914 will be approximately 250,000 tons of blackstrap, and that the domestic sugar producers will be unable to supply more than 160,000 tons of this commodity, thus leaving the available supply about 90,000 tons below the probable demand.

With these conditions in mind, Mr. C. U. Snyder, of C. U. Snyder & Company, visited members of the trade in January, 1913, for the purpose of ascertaining whether they were inclined to assist him in efforts to obtain an additional supply of blackstrap from Cuba. Fol-

lowing these interviews, in February, 1913, he made a trip to Cuba, to determine the conditions there existing with respect to this commodity and the price at which it could be obtained f. o. b. some Gulf port in the United States. After his visit to Cuba he again called upon members of the trade, and was encouraged to proceed with his plans for the importation of Cuban blackstrap. It then became necessary for him to determine at what rates it would be possible to move this traffic from the ports and what facilities existed at the ports for its transshipment.

This commodity is transported from Cuba to the United States in tank steamers. At the port it is necessary to erect a tank, into which the blackstrap may be pumped from the tank steamer. While in this tank the blackstrap is gauged and tested by the revenue officers of the United States government, and the duty thereon is assessed. Later it is pumped into tank cars and shipped to various destinations in the United States.

Mr. Snyder found that the existing rate from the ports of Mobile and New Orleans to St. Louis was 21 cents. He also found that the carriers at the ports had no tank facilities for storage of this commodity and that it would be necessary for anyone engaging in the importation thereof to build his own tank. After some negotiations, in June, 1913, respondent's freight-traffic manager told Mr. Snyder that he would recommend to his superior officers the publication of a rate of 15 cents on imported blackstrap from Mobile to St. Louis and East St. Louis. This recommendation was submitted to respondent's vice president in charge of traffic and to the president, and was approved by those officers. On July 3, 1913, Mr. Snyder was advised that respondent would publish the 15-cent rate.

The publication was delayed until September 29 for several reasons. The carrier did not deem it necessary to publish the rate until it was assured that Mr. Snyder would make arrangements to import the traffic through Mobile. In due course, Mr. Snyder contracted for the erection of a tank on respondent's property adjacent to its docks at Mobile, the land for this purpose having been leased to Mr. Snyder at an annual rental of \$480, said to be equal to 6 per cent of the value of the land so leased. The lines for which agent Washburn publishes tariffs were advised by him, about July 25, that respondent proposed to publish the 15-cent rate; and thereupon certain lines, including protestants, asked for a conference with respondent's officials for the purpose of dissuading them from publishing that rate. Respondent acceded to these requests and there were several conferences upon the subject, but it was not persuaded to change its intention, and the rate was published on September 29, 1913.

The facts do not support protestants' allegation that the negotiations between Mr. Snyder and the Mobile & Ohio were conducted in such manner as to give an improper advantage to Mr. Snyder through advance information that the 15-cent rate would be published. Shortly after it had announced its intention to publish a 15-cent rate from Mobile, respondent notified its connections into New Orleans that it would be glad to join in the publication of a similar rate from New Orleans, and it has at all times since the inception of this proposition been ready and willing to rent land in its terminals at Mobile to any other shippers who desire to erect tanks for the purpose of importing molasses.

It is also urged by protestants that the establishment of the 15-cent rate from Mobile will result in discrimination against New Orleans shippers. Undoubtedly it is true that if the rate is not reduced from New Orleans, the New Orleans shippers of domestic and imported blackstrap will be at a disadvantage of 6 cents per 100 pounds as compared with the shippers from Mobile, for the reason that the rate from New Orleans to St. Louis is 21 cents. It is not shown, however, that the discrimination is one which is prohibited by the act to regulate commerce. Respondent has its own rails from Mobile to St. Louis and East St. Louis. It has an undoubted right under the act to publish, in the manner and form provided by law, any reasonable rate on any commodity between those points, regardless of the objections of carriers which lead from other points. Respondent does not reach New Orleans and can not publish a rate from that point without the concurrence of connecting carriers which reach New Orleans. Inasmuch as respondent is in such a position that it can not, by its own authority, establish a rate from New Orleans to St. Louis, although it is willing to join in a 15-cent rate from New Orleans to St. Louis on both domestic and imported blackstrap, it can not be said that it subjects shippers at New Orleans to undue prejudice or disadvantage within the meaning of section 3 of the act.

As to the remaining ground urged by protestants, it is not clear under what authority they expect the Commission to prevent the reduction of a rate over the Mobile & Ohio for the purpose of conserving the revenues of other carriers. The testimony upon this point of the traffic officials of the Illinois Central; Louisville & Nashville; and Nashville, Chattanooga & St. Louis, is substantially as follows: Almost without exception the same rates obtain from Mobile and New Orleans to St. Louis. If the 15-cent rate is permitted to become effective from Mobile, it will be necessary for the New Orleans lines to meet that rate, and thereby suffer heavy losses in revenue, or to permit the New Orleans shippers to remain at a disadvantage as compared with shippers from Mobile.

The reasonableness of the 21-cent rate from New Orleans is not in issue in this proceeding. Nevertheless, in view of the evidence and contentions of the protestants, certain comparisons of rates noted of record are pertinent. The protesting lines maintain a number of import rates to St. Louis and Chicago, which are equal to or less in cents per 100 pounds than the 15-cent rate from Mobile. They maintain, for example, rates of 10 cents to Chicago and 13 cents to St. Louis on clay;  $11\frac{1}{2}$  cents to Chicago and 14 cents to St. Louis on pig lead; 11 cents to both points on magnesite; 11.6 cents to Chicago and 14.5 cents to St. Louis on chrome ore; 15 cents to both points on hemp or jute waste; 15 cents to both points on brewer's rice; and 18 cents to Chicago and 15 cents to St. Louis on sisal.

This so-called blackstrap is the residue which is left after all of the sugar and of the edible molasses has been extracted from the cane. It is the lowest grade of molasses, is nonedible, and can not be used in the manufacture of any edible product, except in connection with some of the higher grades of molasses which have already been extracted from the cane and of which the blackstrap is refuse. Substantially the entire domestic product of blackstrap is used in the production of animal foods, as above stated. The contracts so far made by Mr. Snyder are generally based upon a value at the port of 6 cents per gallon, and it is said that the Louisiana product sells for about the same figure at New Orleans.

The 21-cent rate maintained by protestants from New Orleans to St. Louis applies not only to blackstrap but to all of the higher grades of molasses, whether shipped in tank cars or in packages suitable for use by the retail trade. In other words, it is a rate under which protestants transport commodities worth five or six times as much per gallon as the blackstrap. Protestants maintain a domestic rate of 17 cents from New Orleans to St. Louis on refined sugar, which is the most valuable product obtained from the cane, and contemporaneously maintain a rate of 21 cents on blackstrap, which is the residue of least value from the manufacture of sugar; and although they maintain a rate of 17 cents on refined sugar, they assert that a rate of 15 cents from Mobile to St. Louis on blackstrap is so low that it ought to be prohibited. Protestants also maintain a carload rate of 15 cents on salt from New Orleans to St. Louis, and a domestic rate of 18 cents on petroleum and its products from St. Louis to New Orleans and Mobile. The domestic rate on refined sugar from Mobile to St. Louis is 16 cents.

The distance from Mobile to St. Louis via the Mobile & Ohio Railroad is 657 miles and via the Louisville & Nashville Railroad about 800 miles. The distance from New Orleans to St. Louis via the short line is 700 miles and to Memphis 395 miles. Protestants maintain a rate of 10 cents on blackstrap from New Orleans to Memphis.

The 21-cent rate from New Orleans to St. Louis applies also from practically all of the sugar plantations in Louisiana. From many of the plantations on the Texas & Pacific west of New Orleans the rate to New Orleans is 7 cents. As to traffic from these plantations beyond New Orleans, protestants shrink their divisions of the 21-cent rate so as to give the originating line, for its haul up to New Orleans, at least 6 cents per 100 pounds, thereby leaving to the lines beyond New Orleans not in excess of 15 cents for the transportation to St. Louis. Some of the lines have established transit privileges at New Orleans, under which the shippers are permitted to store the blackstrap at that point and reship it to destination at the through rate from point of origin to ultimate destination.

While respondent is a party to the tariff which names the 21-cent rate from New Orleans, that line has received a very small proportion of the New Orleans-St. Louis traffic, for the reason that two of its competitors, the Louisville & Nashville and the Illinois Central, have their own rails the entire distance from New Orleans to St. Louis, and they are not inclined to turn over to a connecting line for transportation to St. Louis traffic which has originated on their own rails.

Respondent's officials have stated quite fully the reasons which led them to publish the 15-cent rate on blackstrap. Mr. Snyder convinced them that it would be impossible for him to induce the movement of a considerable tonnage through Mobile unless the rate to St. Louis were as low as 15 cents. Inasmuch as there are no sugar plantations on respondent's line and there had been no importation of the commodity through Mobile, it appeared to respondent's officials that the publication of a rate which would induce the movement of a considerable amount of traffic over their line would result in revenue which would be substantially a net gain, in view of the fact that it would not displace any existing traffic on their line, but would induce the movement of new traffic at little additional expense.

It was also brought to their attention that it would be necessary in the sale of this product at St. Louis to meet the competition of the beet refuse produced in the beet-sugar industry; and that from points of production in Wisconsin and Michigan, approximately the same distance from St. Louis as is Mobile, the lines leading to St. Louis from those states maintain rates of 12 cents. They also considered the fact that the Louisville & Nashville maintains a rate of 15½ cents on blackstrap from New Orleans to Owensboro, Ky., a distance of 789 miles; and that the New Orleans lines maintain a rate of 17 cents on refined sugar from New Orleans to St. Louis.

A considerable number of feed manufacturers have contracted for the purchase of imported Cuban blackstrap to be shipped through the port of Mobile. Substantially all of these contracts are based on a price f. o. b. Mobile, the freight rate beyond that point being 28 I. C. C.

- borne by the purchaser of the blackstrap. While a number of these contracts were made prior to the publication of the 15-cent rate, a number were made after that date, upon the assumption that the 15-cent rate would become effective on the date shown in the tariff. Under these contracts deliveries are to commence January 1, 1914, and to continue throughout the year.

Upon the facts of record we are unable to find that the proposed rate will be unduly preferential or prejudicial within the meaning of section 3 of the act, or that there is any other ground for continuing the present suspension. It appears that as a practical matter this traffic can not be handled except through a tank erected at the port, and it is on this account that the proposed rate is stated in the form above quoted. In order, however, that there may be no discrimination between shippers, we are of opinion that the item in question should be revised so that the 15-cent rate will be applicable to imported blackstrap molasses in tank cars, whether imported from Cuba or other countries, and whether unloaded into storage tanks and reshipped from such tanks or transferred direct from vessel to tank car. As so amended, the rate will be open to any shipper who may be able to arrange for transfer direct from steamer to tank car. Respondent may make effective, upon three days' notice, a tariff canceling the suspended item and republishing the 15-cent rate in the form above prescribed. When this has been done an order vacating this proceeding will be issued.



No. 5387.

NATIONAL SYRUP COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY  
ET AL.

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*Submitted May 10, 1913. Decided December 2, 1913.*

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Rate on glucose of  $23\frac{1}{2}$  cents per 100 pounds from Chicago, Ill., to St. Joseph, Mo., found unreasonable and rate of  $18\frac{1}{2}$  cents prescribed for the future.

*Frank Lyon* for complainant.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*T. J. Norton* and *A. A. Hurd* for Atchison, Topeka & Santa Fe Railway Company.

*J. G. Morrison* and *Winston, Payne, Strawn & Shaw* for Chicago Great Western Railroad Company.

*W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*C. C. Wright* for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

Prior to 1912 the corporate name of the complainant herein was the National Manufacturing Company, and under that title it complained of the rates on syrup from St. Joseph and Missouri River points to western destinations. *National Mfg. Co. v. A. T. & S. F. Ry. Co.*, 23 I. C. C., 79. But it was definitely shown upon the record in that proceeding that the complainant's trouble was not with the rates on syrup to those markets, but grew out of the fact that the price of the glucose used by it in making the syrup is arbitrarily fixed by the commercial interests that control its manufacture. Wherever it may be used in this general territory and whether manufactured by the so-called trust or by independent concerns, the price demanded for glucose is the Chicago price plus the rate from Chicago. In consequence of this condition of affairs the complainant, although it then secured its glucose at Keokuk, from which point the rate to St. Joseph is but  $18\frac{1}{2}$  cents, was nevertheless compelled to pay the Chicago price plus  $23\frac{1}{2}$  cents per 100 pounds, that being the rate from Chicago to St. Joseph. This situation put the complainant at a disadvantage because its competitors at Chicago get their raw glucose there without any attendant freight charges and at the same time

enjoy from that point the same rate on syrup to the Pacific coast that is exacted by the carriers from St. Joseph. We found, however, that this disadvantage resulted from the location of the complainant's plant and from commercial conditions not within our control and that did not grow out of the rates of which complaint was made. The complaint was dismissed.

In this proceeding the same interests, under the new corporate title, are now questioning the reasonableness of the rate on glucose from Chicago to St. Joseph; and the situation developed on the record emphasizes the fact found in the original report, namely, that it is the location of its plant and the commercial control of the price of glucose that are working adversely to the complainant's interests. The complainant does not use the 23½-cent rate from Chicago of which it is now complaining. Its raw glucose at the present time is obtained at Clinton, from which the carriers demand 18½ cents. The rate attacked is therefore not the rate applicable to the transportation service performed for the complainant, but is simply a factor that arbitrarily enters into the price of the commodity when consumed at St. Joseph. It is true the complainant also alleges that the rate on glucose from Clinton to St. Joseph is unreasonable; but, so long as these commercial conditions continue, whatever we may find with respect to the Clinton rate the Chicago rate will control the price of glucose purchased at Clinton for use at St. Joseph.

The Chicago rate is therefore the main point of attack here. It is alleged to be unreasonable in and of itself and unduly discriminatory because (a) the same rate is charged on syrup, the manufactured product, as is charged on glucose, the raw material; (b) the rate charged on glucose, the manufactured product, is 70 per cent greater than the rate charged on corn, the raw material, while between other points the spread is much less; (c) higher rates are charged on glucose than on other commodities that can not be transported at so low a cost as glucose. The testimony in support of these contentions may be summarized as follows:

In the south and east a lower rate is charged on glucose than on syrup, but in the territory west of the Missouri River glucose takes the same rate as syrup; and this adjustment enables the competitors of the complainant to ship corn syrup into St. Joseph at the same rate the complainant must pay on his raw material. Corn syrup is composed of 90 per cent glucose and 10 per cent refiners' syrup, and when thus blended the finished product is attractively labeled and shipped out in tin cans and bottles; in this form its value in the open market is increased by about 40 per cent. Glucose averages about 15 per cent higher in value than corn. Although corn syrup is shipped in box cars and glucose generally in tank cars the freight rate on the two commodities is the same in this territory.

In addition to these facts reference was made on the hearing to *State of Iowa v. A. C. L. R. R. Co.*, 24 I. C. C., 134, where we reduced the rate on glucose from Chicago to Edgewater, a point in New York Harbor, from 24 cents to 20 cents, the rate on corn between the same points being 16 cents. Using this rate of 20 cents to New York, as established by the Commission, for the purpose of comparison the complainant attacks the glucose rate of 23½ cents from Chicago to the Missouri River, the rate on corn between the same points being 18½ cents.

The carriers on the other hand urge that corn syrup is nothing more or less than glucose flavored with refiners' syrup, and indeed, under pure-food inspection decision No. 87, glucose may be labeled "corn syrup." They also show that there has been a parity of rates as between the two commodities since 1898. There are west of the Mississippi River other manufacturers of syrup who use glucose as the basis of their product and, so far as we are advised, they are not contesting the relationship of rates as between glucose and corn or as between glucose and corn syrup. The complaint here is the first and only complaint that has been made to us, either as to this relation of rates or as to the reasonableness *per se* of the rates on glucose from Chicago to western points of consumption. Moreover, while the particular complainant gets his glucose in tank cars it does not appear how shipments of that commodity are made to other syrup factories. The record shows that the aggregate shipments to Missouri River points and Colorado in 1907 were 27,500 tons. No later statistics seem to be available, although we are under the general impression that the traffic is increasing. The complainant during 1911 and 1912 received 72 carloads of glucose, of which 58 were in tank cars and 14 in box cars. The former averaged 87,000 pounds in weight and the latter 41,000 pounds.

The record is not broad enough to give us any explanation of the failure of other manufacturers of syrup and users of glucose in this western territory to join with the complainant in attacking these rates or to make independent complaints of their own; and we are left in some doubt as to the side on which their interest in this contest may fall. Possibly they may be materially affected by a disturbance of an adjustment that has continued for so many years. Moreover, it is probably true, as was urged by the defendants, that any reduction in this rate would simply result in diminishing their revenues without being of any help to the complainant. The record shows that the glucose sold by the complainant is purchased f. o. b. its factory and, while we understand that the Chicago rate enters into the price, it is by no means certain that the interests in control of the manufacture of glucose will reduce their price to correspond with any reduction that may be made in the rate from Chicago to St.

Joseph. If it suits their purposes to maintain a parity in price as between glucose and syrup, they are in a position to do so notwithstanding any rate order that we may enter. Moreover, whatever rate we may fix on glucose from Chicago to St. Joseph, the complainant to that extent will be at a disadvantage with its competitors, too large apparently for it to overcome by any shrinkage of its profits. Nevertheless in the case cited we reduced the rate on glucose between Chicago and New York from 24 cents to 20 cents. The latter rate yields 4.38 mills per ton per mile for a haul of 912 miles. This is one of the reasons urged here for a reduction of the 23½-cent rate between Chicago and St. Joseph to 15 cents. The earnings under the present rate are 1 cent per ton per mile for a haul of 469 miles. There are of course material differences in the condition of transportation and the density of traffic east and west of Chicago; but making due allowance for all these matters we think it clear that the present rate of 23½ cents from Chicago to St. Joseph can not stand. The carload earnings under that rate are per tank car \$204 and per box car \$96, using as a basis the average weights given by complainant. Under a rate of 18½ cents the rate per ton per mile would be 7.8 mills and the carload earnings would be \$161 and \$75.85 in tank cars and box cars respectively. Moreover, although the intrinsic value of corn syrup is but 15 per cent greater than that of glucose, nevertheless by reason of the manner in which it is prepared for table consumption its market value as above shown is very substantially in excess of the value of glucose.

All things considered we are of the opinion and find that the present rate of 23½ cents has been shown to be unreasonable and excessive and that the rate ought not for the future to exceed 18½ cents per 100 pounds. The rate from Clinton must also be readjusted, but there is no sufficient basis of record for an order respecting movements from that point. It will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 242.  
CHICAGO SWITCHING CHARGES.

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*Submitted October 9, 1913. Decided January 6, 1914.*

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Proposed increase in rates on interstate shipments of coal from Chicago, Ill., to Ravenswood, Ill., and reduction of amount of absorption on such shipments by line carriers found not to be justified and suspended tariffs required to be withdrawn.

*M. F. Gallagher* for protestants.

*R. H. Widdicombe* and *H. W. Beyers* for Chicago & North Western Railway Company.

*George H. Crosby* for Chicago, Burlington & Quincy Railroad Company.

*Frank A. Spink* for Belt Railway of Chicago.

*O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

*Howard T. Ballard* for New York Central lines and Baltimore & Ohio Railroad Company.

*James Stillwell* and *A. P. Burgwin* for Pennsylvania lines.

*James Cameron* for Grand Trunk Railway system.

REPORT OF THE COMMISSION.

*McCHORD, Commissioner:*

Upon a formal complaint of *Gilmore & Co. v. C. & N. W. Ry. Co.*, 25 I. C. C., 403, it was held that on carload shipments of coal to consignees at Rose Hill, Ill., rates of 20 cents per net ton on bituminous and 10 cents per net ton on anthracite coal in excess of the charges for similar transportation to Ravenswood, Ill., a point about 1½ miles south of Rose Hill, and nearer Chicago, was an unjust discrimination against Rose Hill and that a proper spread between said points should not be in excess of 5 cents per net ton. In that case we said—"this will afford the delivering carrier compensation for the slightly additional service performed by it, and will not require any change in the existing boundaries of the Chicago switching district." At that period and for some time previous Ravenswood was under the Chicago through rate, the line-haul carriers absorbing on bituminous coal \$6 per car of the switching charges or local rate from Chicago to Ravenswood, which was at that time 20 cents per ton. The rate

to Rose Hill is made on combination of the rate to Chicago plus the local of 30 cents per net ton thence to Rose Hill. Of this rate the coal-carrying roads absorb \$4 per car of 80,000 pounds or less and 10 cents per ton additional on cars of over 80,000 pounds.

On anthracite coal absorption of the switching charges of the Chicago & North Western to both Rose Hill and Ravenswood was provided to the extent of \$4 per car, regardless of weight, the difference in rate being the result of the spread in the locals. In an attempted compliance with the order of the Commission in the case referred to, instead of lowering the Rose Hill rate, the respondents raised the Ravenswood local to 25 cents, and at the same time the line-haul carriers filed tariff canceling the through rate and reducing the absorption on bituminous coal from \$6 to \$4 per car, the effect of all of which was to put Ravenswood on a basis of 15 cents and 5 cents per net ton higher on bituminous and anthracite, respectively, than points immediately south of and in competition with Ravenswood, by means of wagon and motor-truck deliveries. In this situation Zipf Brothers Coal Company, located at Ravenswood, protested against the new tariffs becoming effective, alleging that they would result in an illegal discrimination, in that their immediate competitors, of which there were many, would be upon a basis of 15 cents per net ton lower, which would practically eliminate protestant from the business. It appears that the chief interest of this concern is with the soft-coal rates. Complaint as to the proposed rates was also made by the Chicago Coal Dealers' Association.

The respondents seek to justify the manner in which they attempt to comply with the Commission's order in the Rose Hill case by asserting that if they should reduce the Rose Hill rate to within 5 cents of the present Ravenswood rate, it would result in too great a spread between Rose Hill and Rogers Park, and other points immediately north, and subject them to the same complaint they encountered in the Rose Hill and the instant case. This argument, however, is extraneous to the issue, which is whether the proposed rates to Ravenswood are reasonable. The fact that another complaint might possibly arise out of the same general situation is not a controlling factor in the determination of that question, as cases of alleged undue preference or prejudice must be adjudged upon their respective merits. To substantiate the reasonableness of the advanced rates respondents offer testimony tending to show that what is known as the Chicago switching district really ends at Deering, though the map filed with the Lowrey tariff, to which respondents are parties, indicates that only the inner zone of the switching district terminates at or near Deering while the outer zone extends much farther north and takes in Ravenswood and other points several miles above Ravenswood.

Respondents say, however, that the switching district proper extends no farther north than to the many manufactories to be found in and around Deering; that farther north the residential section is reached, and that the same reason for a lower rate does not exist in this section, because with reference to commodities transported to such sections the cars must be returned empty, affording no revenue, while the cars going into the manufacturing section are, in most cases, reloaded, and thereby furnish revenue on the return trip. It is furthermore contended that after reaching Deering, on consignments to Ravenswood and points farther north, on account of the congested condition and the heavy passenger-train service, it is necessary to divert this freight traffic from the short line and carry it out as far as Mayfair, Ill., and there take an entirely different line, both as to train service, style of engine, and crew, by reason of the fact that coal for Cuyler, Ravenswood, Rose Hill, and points north must be handled from off an elevation, necessitating a lighter train, two more men to the crew, and a great loss of time in operation, all of which must be done during the day, due to the fact that suburban residents object to operating that line at night. All of this, say respondents, justifies a greater charge for switching services than that in effect at Deering and points within the inner zone. This argument is worthy of consideration, although it is to be noticed that the Chicago & North Western has been handling this coal traffic for Ravenswood and points north for many years on the basis of 20 cents per net ton, and this respondent only discovers the fact that it is a more expensive service than similar transportation to Deering, after it becomes necessary to either lower its Rose Hill rate or increase the Ravenswood rate to meet the order of the Commission. Where a particular rate has been in effect for several years, the presumption is that it is a compensatory rate and it will not be disturbed except upon proof that present conditions are such as to demand it. Further than this the protestants show by the respondents' own witnesses that at the present time, and for some time past, coal has been delivered on the Chicago rate basis to many other points outside of Chicago and farther removed therefrom than Ravenswood by several miles. Respondents endeavor to meet this by showing that consignments for these points come in at Forty-ninth street and are taken to destinations without going through the congested district at all, but when we consider the distances to which such traffic must be carried under some, if not all, of the same conditions, we do not think that respondents' efforts sufficiently meet the discrimination sought to be made by the suspended tariffs.

With reference to the tariffs of the line-haul carriers, whereby the through rate, or application of the Chicago basis, is withdrawn and

the absorption on consignments to Ravenswood is reduced from \$6 to \$4 per car, we fail to find sufficient evidence to justify such a change, nor have these respondents filed briefs specifying any reason why the proposed rates should be allowed to become effective. Likewise, we are of the opinion that the contemplated increase in the local rate would work a disadvantage and an unjust discrimination against Ravenswood. It is our conclusion that the defendants have failed to sustain the burden cast upon them of showing the reasonableness of the proposed increase, and an order will be entered directing that the suspended rates be withdrawn.

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No. 5655.

OMAHA GRAIN EXCHANGE

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY  
COMPANY.

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*Submitted October 16, 1913. Decided January 5, 1914.*

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1. Upon complaint against one carrier and against the rates on grain from Omaha, Nebr., to certain of its stations in Oklahoma; *Held*, That the Commission will not fix a uniform differential basis, Omaha over Kansas City, to all Oklahoma destinations.
2. Specific rates complained of not found to be unreasonable or unjustly discriminatory.

*Edward P. Smith* and *C. D. Sturdevant* for complainant.

*W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company.

*H. G. Wilson* for Board of Trade of Kansas City, Mo., intervener.

*Edward Holland* for Saint Joseph Board of Trade, intervener.

*W. S. Washer* for Board of Trade of Atchison, Kans., intervener.

*R. G. Merriok* for Atchison, Topeka & Santa Fe Railway Company, intervener.

*W. W. Miller* for Missouri, Kansas & Texas Railway Company, intervener.

*F. O. Dumbach* for St. Louis & San Francisco Railroad Company and its receivers, interveners.

*J. M. Souby* and *J. R. Mills* for Kansas City Southern Railway Company, intervener.

28 I. C. C.



## REPORT OF THE COMMISSION.

CLARK, *Chairman*:

Complainant, a corporation composed of grain dealers and elevator operators, seeks a readjustment of rates on coarse grain and wheat from Omaha, Nebr., to certain stations in Oklahoma. Defendant's proportional rates from Omaha, applicable as reshipping rates upon traffic received by rail, are attacked as unreasonable *per se* and relatively discriminatory in violation of section 3, and certain rates are suggested for future reasonable rates.

On hearing, the original charge of unreasonableness *per se* was virtually abandoned, the testimony being directed principally to the relation between proportional rates from Omaha and from Kansas City, Mo., to Oklahoma destinations and to the support of complainant's demand for the establishment of a differential, Omaha over Kansas City, of 3 cents per 100 pounds on coarse grain, with rates on wheat uniformly 1 cent per 100 pounds higher. The present rates from Omaha were established in September, 1912, and represent as to some stations increases over those previously in force. Complaint was brought on the theory that the Chicago, Rock Island & Pacific Railway, hereinafter designated Rock Island, had, at the instance of the Missouri, Kansas & Texas Railway, and perhaps of the Kansas City grain interests, withdrawn from Omaha an adjustment which it had enjoyed for several years. The end sought is to have that adjustment restored. Upon study and analysis of the situation, the conviction was reached that there was no fixed or stable basis of rates to Oklahoma and that there should be a flat differential, which the Commission is now importuned to establish. There has never been a fixed differential on coarse grain to Oklahoma, nor has there been a specific relation of rates, wheat as compared to coarse grain, the demand for a difference of 1 cent having its derivation in the belief of complainant that this relation prevails generally in the west. This belief, however, is not confirmed by the evidence.

There are upwards of 200 stations on the Rock Island in Oklahoma, of which but 34 are named in the complaint. The rates to these 34 stations may, and probably do, furnish a guide to the proper adjustment to the remaining stations; but we must necessarily confine ourselves to the pleadings and, in the absence of complaint with respect thereto, can make no finding concerning the rates to such remaining stations.

Omaha and Kansas City are important grain markets, which, as to traffic to Oklahoma, are served by numerous carriers other than the Rock Island; and none of the other carriers are defendants herein. Determination of a fixed basis of rates from Omaha as compared with Kansas City must have consideration for the deserts

of the several other carriers due to the positions they occupy, the measure of the rates via the different lines, and many further factors which are not adequately dealt with in this proceeding, involving as it does the rates of a single carrier to a few of its stations. In the circumstances we can not undertake, on this record, to settle so broad a question as that of the differential relation of the two markets.

Intervening petitions were filed by the Board of Trade of Kansas City, Mo.; St. Joseph Board of Trade, of St. Joseph, Mo.; Board of Trade of Atchison, Kans.; Atchison, Topeka & Santa Fe Railway Company; Missouri, Kansas & Texas Railway Company; St. Louis & San Francisco Railroad Company and its receivers; and Kansas City Southern Railway Company. These interests were all represented at the hearing and were heard in opposition to any change in the existing adjustment.

Formerly there were no proportional rates applicable from Omaha or Kansas City on this traffic. The local rates from Omaha on which the traffic moved were made approximately 7 cents per 100 pounds on wheat and 6 cents per 100 pounds on coarse grain higher than the local rates from Kansas City, observing the St. Louis rates to Oklahoma as maxima. Later the Missouri, Kansas & Texas Railway established from Kansas City a line of proportional rates less than the local rates from that point, and thereafter the Rock Island adopted the same proportional rates from Kansas City to its junctions with the Missouri, Kansas & Texas in Oklahoma, and simultaneously established proportional rates from Omaha, preserving the same relation that obtained in the local rates. The proportional rates to the junction points were held by the Rock Island as maxima at intermediate stations until the flat local rates were reached, and to stations beyond the junctions with the Missouri, Kansas & Texas corresponding reductions below the local rates were made. Some of the rates so made from Omaha were less than  $5\frac{1}{2}$  cents per 100 pounds higher than the rates from Kansas City; and as under the general basis rates from Omaha were predicated upon the Omaha to Kansas City rate of  $5\frac{1}{2}$  cents, plus the rates thence to Oklahoma destinations, the Missouri, Kansas & Texas demanded that the Rock Island increase its Omaha figures where they were less than  $5\frac{1}{2}$  cents higher than Kansas City, the alternative being the restoration of this difference by reductions in the Missouri, Kansas & Texas rates from Kansas City. Under these conditions the Rock Island, in September, 1912, increased its rates to various stations. The increased rates to the stations included in the complaint, the rates previously in force to such stations, and the rates originally asked for by complainant being set forth in the table following, in cents per 100 pounds.

Station.	Rate on wheat.			Rate on corn.		
	Former.	Present.	Asked for.	Former.	Present.	Asked for.
Medford.....	19	19	17	16½	16½	17
Billings.....	21	21	18	18½	18½	18
Enid.....	21½	21½	19	19	19	19
Ringwood.....	22	22	19	19½	19½	19
Okemore.....	23½	23½	21	20½	20½	21
Watonga.....	24½	24½	22	21½	21½	22
Apache.....	25½	25½	23	23½	23½	23
Lawton.....	26	27	24	24	25	24
Walter.....	26½	27	24	24½	25	24
Temple.....	27	27	24	25	25	24
Kingfisher.....	22	22	19	20½	20½	19
Guthrie.....	22	22	19½	20½	21	19½
Chandler.....	23	23	20½	21	21	20½
El Reno.....	22	23	20	20½	22	20
Chickasha.....	22½	24	21	21	23	21
Assacko.....	25	25	23	23½	23	23
Corbetta.....	25	25	22	23½	23	22
Hobart.....	25	26	23	23½	25	23
Granite.....	25	26	23	24	25	23
Mangum.....	25	27	24	24	25	24
Waurika.....	25	25	22	24	24	22
Wilburton.....	21	23	20	16	20½	20
Hartshorne.....	22	23	20	19½	21	20
Haleyville.....	22	23	20	19½	21	20
Pittsburg.....	22½	23	20½	21½	22	20½
Coalgate.....	23½	24	21½	22½	23	21½
Tishomingo.....	24	24	21½	22½	23	21½
Randolph.....	24½	25	22½	23½	23	22½
Ardmore.....	25	25	22½	23½	23½	22½
McAlester.....	21	23	20	16	20½	20
Holdenville.....	22	23	20	20½	22	20
Shawnee.....	22	23	20	20½	22	20
Oklahoma City.....	22	23	20	20½	22	20

The record does not disclose the basis for the rates originally asked, some of which are higher than the existing rates, but, as we have seen, what is now demanded, is a complete readjustment of the Omaha-Kansas City relationship.

The distance via the Rock Island from Omaha to Kansas City is 333 miles and that via the Chicago, Burlington & Quincy 194 miles. The rate via both lines is 5½ cents per 100 pounds. The short-line distance from Omaha to points on the Missouri, Kansas & Texas in Oklahoma is through Kansas City, and this is likewise true to a large extent of Rock Island points in Oklahoma common with the St. Louis & San Francisco and the Atchison, Topeka & Santa Fe. The actual distances via the Rock Island from Omaha to certain of the Oklahoma destinations involved, selected as representative of defendant's maximum and minimum hauls, the proportional rates on corn and the per ton-mile yield are:

From Omaha to—	Rock Island distance.	Proportional corn rates per 100 pounds.	Rate per ton-mile.
	Miles.	Cents.	Mills.
Medford.....	443	16½	7.44
McAlester.....	632	20½	6.00
Ardmore.....	810	23½	5.20
Waurika.....	632	24	7.59
Mangum.....	666	25	7.61
Watonga.....	535	21½	8.00

The law casts upon defendant the burden of proof of the reasonableness of the increased rates, and it was testified that the local rates from Omaha yield less per ton-mile revenue than is afforded the carriers under the basis prescribed by the Commission in *Farmers, Merchants & Shippers' Club of Kansas v. A. T. & S. F. Ry. Co.*, 12 I. C. C., 351, to apply from Kansas points to points in Texas. For illustration: The average distance from Wichita, Kans., to Texas group-3 points is estimated at 640 miles. The rate prescribed by the Commission is 31 cents, and the resulting revenue per ton-mile 9.7 mills. The distance, Wichita to Forth Worth, illustrative of Texas group-1 points, is computed at 468 miles. The Commission required the preservation of the previously existing differentials, group 1 under group 3 (group 4, as it was then known), and this resulted in a rate on grain of 27 cents. The yield per ton-mile at this rate is 11.5 mills.

Using the distances via the short line practicable routes, the present Omaha to Oklahoma points local rates, which are in some instances the same as, and in others higher than, the proportional rates to the same points, yield per ton-mile earnings varying from 6 mills for approximately 700 miles to 8.4 mills for 568 miles. Computed in the same way, the present local rates from Kansas City to Oklahoma destinations yield from 6.2 mills for approximately 540 miles to 10.7 mills for 317 miles.

The mean distances via the short line practicable routes to the destinations with which we have to deal are from Omaha 583 miles and from Kansas City 416 miles. The averages of the existing proportional rates on corn are from Omaha 22.1 cents and from Kansas City 17.3 cents. Such averages produce per ton-mile earnings of 7.05 mills from Omaha and 8.31 mills from Kansas City. These comparisons are pertinent because the rates prescribed by the Commission from Kansas to Texas apply through the state of Oklahoma over the same roads and through the same general territory.

The earnings from the proportional rates via the actual Rock Island routes are not stated in full; but defendant's hauls from Omaha are longer than, and in some instances nearly double, those of the short lines. The Missouri, Kansas & Texas, the St. Louis & San Francisco, and the Kansas City Southern constitute the short lines from Kansas City, especially to central and eastern Oklahoma, hence the Rock Island is not the rate-making line from either Omaha or Kansas City.

From Wichita, Salina, Mineola, Belleville, and Colby, as selected typical interior stations on the Rock Island in the several sections of Kansas, defendant's local rates on wheat and corn to the Oklahoma stations involved are stated in the record. These, if fairly illustrative of the local rate fabric from interior points, indicate that the

local rates from Omaha and Kansas City are reasonably aligned. For example, the corn rates from Wichita, in the southeastern part of Kansas, and Colby, in the extreme northwestern part of the state, as compared with the local rates from Omaha and Kansas City, are in cents per 100 pounds, as follows:

From—	To—				
	Medford.	Mangum.	Waurika.	McAlester.	Oklahoma City.
Omaha.....	17	25	25	21	22
Kansas City.....	11	22	23	17	17
Wichita.....	8½	15½	14½	15½	12
Colby.....	17	25	25	21	22

To Texas and to a considerable portion of Louisiana defendant and other carriers maintain from Omaha proportional rates on coarse grain which are, with substantial uniformity, 5½ cents higher than the rates from Kansas City. To Arkansas the differential is 3 cents, so fixed as the result of competition with Illinois and Iowa grain moving via St. Louis, and to Memphis, Tenn., where the competition is still keener, the differential is 1 cent. These figures are said to have been found essential to enable western grain to enter the markets in competition with eastern grain. Like competition is not met in Oklahoma or in Texas.

Both the old and new rates of the Rock Island present an irregular adjustment with respect to the differences, Omaha over Kansas City; but the present figures are equivalent to the rates carried for a long time by the St. Louis & San Francisco, placing the Rock Island on a substantial parity with the St. Louis & San Francisco and other lines to common points in Oklahoma, and the rates to intermediate local stations and those beyond the junctions appear to be graded with due relation to the rates to the junctions. The fact that uniform differentials, one market over the other, are observed to other territories, while to Oklahoma points the differences vary, furnishes, of itself, no justification for a change in the Oklahoma rates; but this fact may have some bearing in determining whether or not the rates attacked are reasonable and nondiscriminatory.

Omaha draws its grain for the most part directly from the country, and is stated to be more nearly than any other a strictly primary market. Kansas City is also a primary market; but it receives considerable grain from other markets, large quantities being purchased in Omaha. Complainant contends that Omaha should not be deprived of its natural advantage, and alleges that defendant's increased rates will have a ruinous effect, by forcing the business to Kansas City for reshipment. On the other hand, interveners on be-

half of Kansas City, St. Joseph, and Atchison testified that the effect of any lower differentials would be to stimulate traffic from Omaha at the expense of the lower Missouri River markets, cripple the business of these markets, and force some dealers, at least, to remove to Omaha. Whether either of these propositions is sound, the fact is that they are premised upon the maintenance of fixed differentials to Oklahoma territory in general, whereas the instant case concerns only the rates to a small group of Rock Island stations. In addition to this, it appears that the intervening markets have for some years done business in Oklahoma, and presumably with profit, on varying differentials, the range as to Rock Island stations having been from 1 cent to 5½ cents.

Shipments to Oklahoma consist principally of corn and oats, the greater tonnage in corn being yellow or mixed corn for feeding and the lesser tonnage white corn for milling.

The average corn crop of Oklahoma is from 90,000,000 to 100,000,000 bushels. In 1906 it was 134,000,000 bushels; in 1909, 94,000,000 bushels; 1911, 36,000,000 bushels; and in 1912, 101,000,000 bushels. It is not established that the rate increases have had a material effect upon the movement from either Omaha or Kansas City; but crop shortages are shown to have had such effect, the tonnage of grain bought elsewhere decreasing in seasons of average or better crops in Oklahoma.

Complainant relies to a large extent upon comparisons made with rates produced by applying to the Rock Island direct-line distances, Omaha through McFarland, Kans., to destinations per ton-mile earnings yielded by the present rates when applied to hauls, Omaha through McFarland to Kansas City, thence back through McFarland to Oklahoma, a difference of 200 miles, and with rates produced by applying to the Rock Island direct-line mileages per ton-mile earnings yielded by the present rates when applied to hauls, Omaha to Kansas City via the short lines, thence via the Rock Island to Oklahoma destinations. Neither of the routes so used are customary practicable routes, and the hypothetical figures resulting are not acceptable tests of the measure of the rates under attack. If these routes were used, additional back haul and reconsigning charges would accrue; and it is not shown that any grain purchased in Omaha and shipped to Kansas City dealers finds an outlet to Oklahoma via defendant's line from Kansas City.

Market quotations at Omaha and Kansas City are extensively dealt with, and much is made of the advantage enjoyed by Omaha by reason of its ability to sell grain for less than like grain is quoted on the Kansas City market. However, there is no difference in the intrinsic value of like grain in the two markets, and it is not within our province to adjust rates merely to equalize market conditions.

Reference is also made to elevation costs and switching charges which, in some instances, reduce the earnings of the carriers in connection with traffic from or moving via Kansas City, but the testimony with respect to these factors does not indicate that they have an important bearing upon the issues before us.

As all of the Omaha and Kansas City to Oklahoma carriers are not before us, and as we are not placed in possession of requisite information as to the relative extent, character, and value of the services rendered by them in handling this grain, we express no opinion with respect to the desirability of, or justification for, a fixed differential basis, Omaha over Kansas City.

On the whole record it is our judgment that the rates attacked are not unreasonable or discriminatory to the extent of unlawfulness.

An order of dismissal will be entered.

28 I. C. C.

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On the whole record it is our judgment that the rates attacked are not unreasonable or discriminatory to the extent of unlawfulness.

An order of dismissal will be entered.

28 I. C. C.

No. 5711.

MINNEAPOLIS BREWING COMPANY ET AL

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted October 25, 1913. Decided December 1, 1913.*

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Upon the facts of record in this case, the minimum-charge rule of carriers parties to western trunk line circulars, in its application to shipments of returned empty beer packages, not found to be unreasonable.

*H. J. Charles* for complainants.

*J. N. Davis* for Chicago, Milwaukee & St. Paul Railway Company.

*J. B. Sheean* and *W. D. Burr* for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

*W. F. Dickinson* and *R. G. Brown* for Chicago, Rock Island & Pacific Railway Company.

*R. B. Scott* and *George P. Lyman* for Chicago, Burlington & Quincy Railroad Company.

*Kenneth Taylor* for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

#### REPORT OF THE COMMISSION. \

#### BY THE COMMISSION:

Complainants are corporations engaged at Minneapolis, St. Paul, and Duluth, Minn., and La Crosse, Wis., in the manufacture of beer and malt liquors. By complaint, filed April 16, 1913, they assail as unreasonable defendants' rule or regulation under which single shipments of returned empty beer packages are subject to a minimum charge of 100 pounds at the third-class rates. They ask that defendants be required to establish a minimum charge for the transportation of such shipments not to exceed one-half of the fourth-class rates. The defendants are all parties to western classification and also to western trunk line circulars.

The western classification provides a rating of one-half fourth class on returned empty beer packages, based on specified estimated weights. Prior to February 15, 1912, the classification contained no minimum-charge rule for less-than-carload freight. That matter was taken care of in the individual tariffs of the carriers. In western classification No. 51, however, intended to become effective on the

date last mentioned, the following rule (16), similar to that of the official classification, was published:

Unless otherwise provided, minimum charge for a single shipment of less-than-carload freight will be 100 pounds at first-class rate, but in no case less than twenty-five cents.

In *In Re Western Classification No. 51*, 25 I. C. C., 442, 487, a somewhat different rule was proposed by the western classification committee and tentatively approved by the Commission, which is similar to the corresponding rule in the southern classification. It was first published in supplement No. 6 to western classification No. 51, effective February 14, 1913, and as now in force is as follows:

Unless otherwise provided, the minimum charge for a single shipment of one class, classified first class or lower, will be one hundred (100) pounds at the class or commodity rates to which it belongs. If classified higher than first class, the minimum charge will be for one hundred (100) pounds at the first-class rate. \* \* \*

In no case shall the charge on a single shipment be less than twenty-five cents.

Western trunk line circular I. C. C. No. A-396 contains the following minimum-charge rule:

On interstate traffic the minimum charge on a single shipment of one or more classes (except high explosives) shall be the charge for 100 pounds at the third-class rate, but in no case will the charge for a single shipment be less than 25 cents.

The difference between the two rules is obvious. Under the classification rule a single shipment of returned empty beer packages weighing 100 pounds or less would be subject to a charge equal to only one-half the fourth-class rate; whereas under the western trunk line rule the same shipment would be charged the third-class rate, provided in each case that no charge be less than 25 cents. Among the published exceptions to the latter rule is the following:

Between points in Minnesota the minimum charge on a single shipment of one or more classes (except empty carriers returned and high explosives) shall be the charge for a hundred pounds at the third-class rate, but in no case will the charge for a single shipment be less than twenty-five cents.

On empty carriers returned, specified in western classification, \* \* \* the minimum charge between points in Minnesota will be twenty-five cents.

Complainants contend that defendants' interstate minimum charge on shipments of returned empty beer packages should accord with the rule of the western classification, and that if the western trunk line rule is to stand the carriers should be required to establish and maintain an exception thereto, after the manner of the Minnesota exception, which shall cover returned empty beer packages at a minimum charge of 100 pounds at one-half the fourth-class rates, with no charge to be less than 25 cents.

There is considerable variance in the tariffs of defendants and other carriers operating in western trunk line and other territories

with respect to the minimum-charge rule and the rates applicable on empty carriers, returned.

The tariffs of the Great Northern, Northern Pacific, and the Minneapolis, St. Paul & Sault Ste. Marie railways provide that the minimum charge on single shipments of returned secondhand empty carriers, as described in western classification, shall be 25 cents.

The majority of carriers operating in western trunk line territory, either as parties to western trunk line circulars or in individual tariffs, provide a minimum charge of 100 pounds at third-class rate, but not less than 25 cents. Others provide that the minimum charge will be for actual weight at the rate to which the freight belongs, but not less than 25 cents. In other cases the charge is dependent on the point of destination; for instance, the St. Louis & San Francisco provides that the minimum charge shall be actual weight at the tariff rate, subject to a charge on the entire consignment between all stations and St. Louis of 25 cents; between all stations and Cairo and East St. Louis, 50 cents; and between all stations and Chicago, 75 cents. In some cases varying minimum-charge rates, dependent upon the territory in which they apply, are published by the same carriers. To illustrate: On the Wabash Railroad, on class and commodity traffic from Kansas City, etc., to stations on the St. Paul & Des Moines Railway; from stations on the Wabash in Missouri to stations on the Iowa & Southwestern Railway; and between Chicago, St. Louis, and points in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, and Wisconsin to stations on the Wabash in Iowa and Missouri, the charge is on basis of 100 pounds at third-class rate, but not less than 25 cents; whereas, on traffic from East St. Louis, East Hannibal, Quincy, and stations in Missouri and Iowa on the Wabash, on class traffic from or destined to territory east of the east line of the state of Illinois, the minimum charge is for actual weight at the rate to which the freight belongs, but not less than 25 cents.

Transcontinental tariff I. C. C. No. 971 contains a minimum-charge rule as follows:

All shipments to or from stations taking St. Paul, Kansas City, Omaha, \* \* \* Mitchell, Aberdeen, and Fargo class rates, the minimum charge on a single shipment of one class, classified first class or lower, shall [be] 100 pounds at the class or l. c. l. commodity rate to which it belongs.

Prior to August 19, 1907, there were varying minimum charges in western trunk line territory; one of 25 cents for short distances, and one of 50 cents for longer distances. From that date to February 1, 1908, the charges were 40 cents and 50 cents, respectively. On the latter date the rule was changed to provide a minimum charge of 100 pounds at the rate to which the article was subject. This

obtained until August 10, 1908, when a minimum charge at the third-class rate on 100 pounds was provided.

In the following table the approximate distances from certain specified points to St. Paul or Minneapolis; the rates on returned empty beer packages; the minimum charge of 100 pounds at the third-class rate; and the minimum charge proposed by complainants, are shown:

From—	Distance.	Rate per 100 pounds.	Minimum charge at third-class rate.	Minimum charge proposed.
	Miles.	Cents.	Cents.	Cents.
Kan Claire, Wis.....	85	7.5	20	25
Superior, Wis.....	152	8.5	25	25
Swan City, Iowa.....	157	9.0	24	25
Oswein, Iowa.....	179	10.0	30	25
Rhainbeck, Iowa.....	224	12.5	35	25
Des Moines, Iowa.....	200	12.5	40	25
Burlington, Iowa.....	354	12.5	35	25
Sauz City, Iowa.....	267	12.5	35	25
Omaha, Nebr.....	357	15.0	45	32
St. Joseph, Mo.....	478	17.0	48	34
Kansas City, Mo.....	540	17.0	48	34
Pierre, S. Dak.....	437	28.0	75	35
Lead, S. Dak.....	674	44.0	102	44

Complainants do not contend that the western trunk line rule is wholly unreasonable. They concede that it may be a just and reasonable rule of general application to the transportation of new articles; but they insist that an exception should be made to cover returned empty beer packages, on the ground that it is unreasonable to charge the same rate on an empty package as on the more valuable full package as to which the transportation risk is greater and the service rendered in equipment and handling more expensive. It is urged that the rule was intended primarily to apply to the transportation of original or outgoing shipments, rather than to shipments of returned empty packages which necessarily result from forward movements.

Defendants contend that the service performed in the transportation of returned empty packages is at least equivalent to that rendered in connection with other commodities of similar weight; that is, the billing, loading, unloading, and collection of charges are the same. They admit, however, that there is a difference between the full and empty packages in liability to damage and in the kind of protection necessary *en route*. They say that a minimum charge of 25 cents is reasonable for a haul from 100 to 200 miles, but that where the haul is longer and the service is by two or more carriers a higher charge is justifiable and proper.

The question at issue has been the subject of much discussion, not only between the complainants and defendants in this proceeding but also between other brewers and carriers throughout the western

classification territory. There appears to be an honest difference of opinion as to what charge should be made on returned empty beer packages, the defendants insisting that such freight should be subject to the same minimum-charge rules as are applied to other commodities. There are other kinds of returned empty packages that are rated one-half of fourth class and are subject to a minimum charge based on 100 pounds at the third-class rates, but no shipper other than complainants has entered complaint.

Adverting to the fact that complainants do not attack the minimum-charge rule of the western trunk line circulars as unreasonable in its general application, and only insist that returned empty beer packages should be excepted from the rule and given lower minimum-charge rates, the defendants say that even this would be impracticable for the reason that the commodity in question can not be separated from other kinds of returned empty packages or from other commodities subject to the minimum charge on any reasonable or justifiable basis.

In practice, the rate of one-half of fourth class, subject to a minimum charge of 100 pounds at the third-class rate, works as follows: The third-class rate from Des Moines to St. Paul, for instance, is 40 cents, and the fourth-class rate 25 cents. Under the western classification an empty beer barrel is estimated to weigh 100 pounds. Therefore, the rate on one barrel would be one-half of the fourth-class rate, or 12.5 cents, but the minimum charge would be 40 cents. On two barrels the rate would be 25 cents, subject to the same minimum charge; and on three barrels the rate would be 37.5 cents with the same minimum charge of 40 cents. The charge on 300 pounds of beer from Des Moines to St. Paul would be the third-class rate of 40 cents per 100 pounds, or \$1.20. So it is seen that beyond 100 pounds in weight the charge on beer is much higher than the charge on the same weight of empty packages.

Only one witness appeared at the hearing for complainants and only one for defendants. It was stated that other testimony could be offered, but it would be merely cumulative. It is to be borne in mind that this proceeding brings in issue the reasonableness of the minimum-charge rule of the western trunk line carriers only with respect to one class of shippers and one kind of returned empty packages. Many carriers and shippers in the vast territory served by the defendants are interested in the question, and in the application of the rule to other kinds of returned empty packages, and likewise in the broader application of the rule to general classes of freight in small shipments.

It would greatly lessen the confusion that now surrounds the situation, and tend to more harmonious and satisfactory results, if the rule of the western trunk lines and of the western classification were

the same. The matter is one of importance and should have the serious attention and consideration of the carriers interested. Harmonious action and satisfactory results should obtain where confusion and dissatisfaction now prevail. We are not convinced, however, that on the facts of the present record a finding to the effect that the rule in question is unreasonable, as contended for by complainants, would be justified. It follows that the complaint must be dismissed, and it will be so ordered.

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No. 5747.

LUDOWICI-CELADON COMPANY

v.

ATLANTIC COAST LINE RAILROAD COMPANY.

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*Submitted October 5, 1913. Decided December 1, 1913.*

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Defendant's rule providing that agents shall decline to receive shipments of freight "to order," with directions to notify parties elsewhere than at destination points, not found to be unreasonable or otherwise in violation of the act except in form. Rule required to be modified and filed with the Commission, if it is to be continued.

*O. M. Rogers* for complainant.

*R. Walton Moore* and *Charles D. Drayton* for defendant.

#### REPORT OF THE COMMISSION.

#### BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of clay products, with headquarters at Chicago, Ill., and a factory at Ludowici, Ga., from which it ships roofing tile in carload quantities. By complaint, filed April 28, 1913, it assails as unreasonable, unjustly discriminatory, and unduly prejudicial a certain rule issued by defendant, embodied in a circular of instructions to freight agents on its lines but not filed with this Commission, which rule reads as follows:

Agents will decline to receive shipments of freight "to order" to notify parties residing elsewhere than at point to which shipment is made. (This does not apply on export shipments or on shipments of cotton, cotton linters, or regins.)

28 I. C. C.

The affirmative part of the rule has been in effect since 1884, and including the exception since 1903. The occasion which gave rise to this proceeding was the alleged refusal by defendant to accept for transportation a carload of roofing tile at Ludowici under a bill of lading consigning the shipment to complainant at Bennettsville, S. C., with order to notify O. E. Hutchinson, Columbia, S. C. The larger carriers in the southeast generally issue similar instructions to freight agents on their lines. It appears, however, that the instructions are not uniformly observed by any of the carriers. It does not definitely appear whether or not the shipment described in the complaint was refused by defendant as alleged or not.

To support its allegation that the rule is unreasonable, complainant shows that in many instances shipments of roofing tile are made to be used by building contractors who are at the time engaged elsewhere than at the point of destination, or to consignees not residing at the point of destination; and it contends that in such cases it would be more convenient to shippers to have the arrival notice sent to the place where the consignee or party expected to receive the shipment resides or is at the time located. Complainant concedes, however, that it might not be advisable to require notice to be sent to consignees or other parties interested who may be located more than 100 miles from destination points; and this, notwithstanding the fact that Columbia, S. C., is more than 100 miles from Bennettsville, the point to which the shipment described in the complaint was consigned. Complainant further concedes that if the rule were changed to exclude roofing tile from its operation, shippers of other commodities would be expected to insist on the exclusion of their traffic also. The case, therefore, involves the question of the propriety of a rule under which carriers would be required to give notice to consignees or other interested parties at points other than points of destination.

The rule in question is one of long standing, and defendant insists that it embodies a reasonable and proper regulation. Defendant felt the necessity of publishing the rule along with other instructions to its freight agents, but it does not concede that such a rule was or is necessary to justify a refusal of shipments covered by bills of lading calling for notice to be given to consignees at points other than destination points. It is urged that to require notice to be given in the manner contended for by complainant would in many cases result in delay in releasing equipment, and thereby cause congestion at destination points; and that to limit such a requirement to points not over 100 miles from destination points would result in discrimination against shippers and consignees not within the 100-mile limit.



It appears that traffic in the southeast is handled largely on card waybills containing condensed information as to points of origin, car numbers, contents, destinations, consignees, etc., and it is insisted that confusion would result from any effort to show on such bills a notification point other than that of destination, and that liability to error as to destination points would be thereby increased. Defendant argues that the law places no duty on carriers to notify consignees of the arrival of shipments at other than destination points, and that to require defendant to establish a rule under which such notice must be given would be to place upon it an extraordinary service not required by law or demanded by any public interest.

The exception contained in the rule as to export traffic appears to have been established because such traffic is usually promptly unloaded at the ports for delivery to water carriers. The exception as to cotton, etc., grew out of a practice among cotton mills in New England when there were practically no cotton mills in the south, and a general office for a group of mills in a limited territory was considered as a central or common destination point. The practice is not now followed, owing to the present method of handling cotton and the change in the method of manufacturing cotton piece goods. Defendant expresses willingness to withdraw the exception as to cotton, etc., as the reason therefor no longer exists. It insists, however, that there is no analogy between export and domestic traffic in respect to the application of the rule, and that roofing tile and other commodities embraced within its operation are not subjected to unjust discrimination, nor does any undue prejudice result to complainant or its traffic.

A somewhat similar rule was embodied in the western classification more than 10 years ago, and is still in effect. As already stated, all the larger carriers of the southeast issue similar instructions to their freight agents, though the circulars containing the same are not filed with this Commission. Defendant says that it has not understood there was any lawful obligation upon it to file such a rule or regulation with the Commission, and for that reason has not done so. It expresses willingness, however, to file such circular if the Commission should so require.

We do not find from the record anything that would justify a holding that the effect of the rule in question is unreasonable; nor do we find that discrimination in any of the forms prohibited by the statute resulted from its operation to complainant's injury because of the exception therefrom of "cotton, cotton linters, and regins." To make an exception of roofing tile, however, would be to discriminate against other like kinds of traffic, and no circumstances, or conditions of transportation, or of notification, have been shown as

peculiar to roofing tile which would differentiate that commodity from others of like nature to such an extent as to justify its exception from the rule.

The rule relates to and is of a character to affect interstate transportation of freight, and in order to secure its observance in a manner to prevent discrimination, the circular containing it should be filed with this Commission and the exception as to cotton should be eliminated. The defendant will be expected to so file the same, and in the future to observe it uniformly as to all shippers. The rule should not provide that agents will decline to accept shipments, as a common carrier must accept traffic offered to it. The rule may, however, provide that the carrier will not execute a bill of lading which contains a provision for notifying a person at a point other than the destination of the shipment. When such tariff shall have been properly filed, the complaint will be dismissed.

23 I. C. C.

No. 5430.

PORT ARTHUR RICE MILLING COMPANY

v.

TEXARKANA & FORT SMITH RAILWAY COMPANY  
ET AL.

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*Submitted June 16, 1913. Decided December 4, 1913.*

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Charges collected for the transportation of certain carload shipments of clean rice from Lake Charles, La., to Port Arthur, Tex., found to have been in accordance with the lawful published rate. Complaint dismissed.

*B. F. Louis* for complainant.

*John G. Schaich, S. W. Moore, and U. R. Hall* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling rice, with a milling and storage plant at Port Arthur, Tex. By complaint, filed January 11, 1913, it assails as unjust and unreasonable the rate charged by defendants for the transportation of certain carloads of clean rice from Lake Charles, La., to Port Arthur, Tex., and asks reparation.

During the period from November, 1911, to June, 1912, complainant shipped over defendants' lines from Lake Charles to Port Arthur 12 carloads of clean rice, of the aggregate weight of 589,100 pounds, for which transportation charges were collected in the sum of \$883.65 at a rate of 15 cents per 100 pounds, the domestic rate in effect at the time from Lake Charles to Port Arthur. At the same time the defendants published a rate of 10 cents from Lake Charles to Port Arthur on clean rice in carloads "when for export or coastwise destination." Complainant avers that the shipments were intended for export, and, as the rice was, in fact, later shipped to Porto Rico it is insisted that the 10-cent export rate should have been charged.

The record shows that the shipments were billed from Lake Charles to Port Arthur in the same manner as domestic traffic. There was no notation on the bills of lading to indicate that they were other than domestic shipments. Upon arrival at Port Arthur the freight charges were paid by complainant at the domestic rate without objection, except possibly as to one or two cars at the last, and the rice was unloaded into complainant's mill. One of the shipments appears

to have been handled by complainant for the account of another and is therefore not directly involved in the controversy.

Complainant's manager testified at the hearing that when the rice was purchased at Lake Charles the intention was to export it to Porto Rico. He was asked how the shipments were billed from Lake Charles, and answered:

They were billed to us at Port Arthur. The bills of lading did not show for export. The reason for that was that at that time I was not familiar with this Kansas City Southern tariff. We had never received a copy of it. It is a special tariff that they issued. In going over some tariff files in Beaumont at the Frisco office there I ran across one of these tariffs and I immediately made application for the refund, which application was denied by the railroad.

A freight official of the defendants testified as follows:

These shipments were offered to us, straight bills of lading taken out reading from Lake Charles to the Port Arthur Rice Milling Company, Port Arthur, Tex.; shipments made by the Lake Charles Rice Milling Company; nothing said about their being for export. We transported them to Port Arthur, delivered them to the Port Arthur Rice Milling Company, collected our freight charges, and it was not until afterwards that there was any complaint made about the rate.

Complainant's witness further testified that the rice was double-sacked at complainant's mill, held in storage there for a time, and all except one car eventually exported to Porto Rico. Asked if the rice was kept at the mill awaiting departure of boats, the witness answered:

Well, in buying the rice we bought it simply as a speculation. Of course we figured on using it for export, and at the time I bought it and ordered it out I figured on using it for the December boat, but the market there just prior to the December sailing was not what it should be, and I swung that stuff along until February, March, April, even as late as May.

The handling at complainant's mill included only double-sacking and storage. The rice was not milled or treated otherwise in any manner. Double-sacking was required as a means of protection as to all rice destined to Porto Rico, and it was said this work could be more cheaply done at complainant's mill than at Lake Charles. No sale of the rice had been contracted at the time of its purchase at Lake Charles, and when ultimately exported it was transferred from the mill in cars and switched a distance of about three-fourths of a mile to the wharf.

It was said that during the seasons of 1911-1912 and 1912-1913 something like 25 or 30 per cent of complainant's shipments of rice from Port Arthur were to coastwise points, and about the same amount to Porto Rico; and, further, that usually about 90 per cent of shipments from interior points to Port Arthur were intended for export or coastwise trade. Complainant's witness was asked how it

was shown that rice shipped to Port Arthur from interior points was for export, and he answered:

We just simply show across the face of the bill of lading "for export," but we have had occasion to use very little of that, because this season we have not exported much; that is, in comparison to last season.

The witness said that the billing under which the shipments in question moved was not marked "for export" because complainant was not familiar with the tariff at that time.

The controlling question is whether the transportation from Lake Charles to Port Arthur was under the circumstances a domestic service or part of a continuous transportation of foreign commerce. Complainant shows that the rice when purchased was intended for export and that it was in fact shipped to Porto Rico, after being double-sacked and stored for a time in the mill at Port Arthur. But the billing under which the shipments moved to Port Arthur contained nothing to indicate that the transportation was other than domestic; and the defendants were without knowledge that the rice was intended for export until after the shipments had been delivered to complainant and the freight charges paid. The shipments were in no manner treated as foreign commerce until the double-sacking took place in complainant's mill, after the transportation by defendants was ended. There was no continuity of movement into and out of Port Arthur, and there was no manifestation of any characteristic of foreign commerce in connection with the shipments prior to their delivery at Port Arthur. Conceding that complainant's intention was to export the rice at some future time when the foreign markets should justify it, such intention was merely a state of the mind, in no way communicated to the defendants, and was unaccompanied by any outward indication of a nature at all inconsistent with a purely domestic transportation service. It was not of itself sufficient to stamp the traffic as foreign commerce. In this respect the case would seem to come within the principle of *Coe v. Errol*, 116 U. S., 517, where it was held by the Supreme Court that a shipper's "state of mind in relation to the goods—that is, his intention to export them and his partial preparation to do so"—did not prove the goods to be export traffic.

The defendants published both a domestic and an export rate on clean rice from Lake Charles to Port Arthur. From all outward indications, and so far as defendants were at the time advised, the shipments in question were domestic shipments. There was no suggestion to the contrary until after the transportation was performed and the charges therefor paid. In this situation the defendants *could not* lawfully have collected other than their published domestic rate. If they had collected their export rate, their action

would have been unlawful. Can it be held that because complainant's intention at the time of the transportation was to export the rice at some future period, the charges lawfully collected should now be refunded down to the basis of the export rate? We think not. That complainant did not know there was an export rate in effect from Lake Charles to Port Arthur is not a matter of material importance. The rate had been in effect for more than six months prior to the date of the first shipment, and complainant was charged with notice thereof.

It is true, as contended by complainant, that the character of the commerce, not its mere accidents, must determine whether a shipment is local or foreign. But it is also true that the mere intention on the part of a shipper to export his traffic, unaccompanied by any circumstance or outward indication that the traffic is in fact for export, is not sufficient to stamp it as foreign commerce.

Complainant contends that the case is controlled by *So. Pac. Terminal Co. v. I. C. C.*, 219 U. S., 498; *Ohio R. R. Commission v. Worthington*, 225 U. S., 101; and other cases of similar nature recently decided by the Supreme Court. The facts of this case, however, do not bring it within the principle of those cases. We hold that the charges complained of were lawfully collected by defendants, and in the absence of evidence to show that they were unreasonable in themselves, no award of reparation can be made.

The complaint also asks that defendants be required to establish and maintain a transit arrangement at Port Arthur which will allow double-sacking and storing of export rice at that point. Such an arrangement has been since established, effective April 15, 1913, applying at various points on defendants' lines, including Port Arthur. This makes it unnecessary to further consider this feature of the case. An order will be entered dismissing the complaint.

No. 5128.

**MERCANTILE LUMBER & SUPPLY COMPANY**

v.

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.**

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*Submitted December 20, 1912. Decided December 3, 1913.*

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There was no published through rate for the transportation of hewn oak ties from Catron, Mo., to Chicago, Ill. Charges assessed, based on the sum of the intermediate rates, one factor of which was not on file with the Commission, found to have been unreasonable. Reparation awarded.

*W. J. Allen* for complainant.

*Fred. H. Wood* and *Edward A. Haid* for St. Louis & San Francisco Railroad Company.

*Roy F. Britton*, *S. H. West*, and *Edward A. Haid* for St. Louis Southwestern Railway Company.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

Complainant is a corporation engaged in the wholesale lumber business at Kansas City, Mo. By complaint, filed August 30, 1912, it alleges that unreasonable charges were collected by defendants for the transportation of three carloads of hewn oak ties from Catron, Mo., to Chicago, Ill. Reparation is asked. This claim was first filed with the Commission March 22, 1912.

In May, 1910, the complainant shipped from Catron, Mo., a local station on the St. Louis Southwestern Railway, to Chicago, Ill., three carloads of hewn oak railroad ties. They were routed by complainant via the St. Louis Southwestern Railway to Thebes, Ill., and thence to Chicago via the Chicago & Eastern Illinois Railroad. There was no published rate on hewn oak ties via the St. Louis Southwestern Railway from Catron to Thebes. This line hauled the ties to Parma, Mo., a distance of 7 miles, and delivered them to the St. Louis & San Francisco Railroad, via which road they moved to Thebes, and thence via the Chicago & Eastern Illinois Railroad to Chicago. The distance from Catron to Thebes via the St. Louis Southwestern Railway is 83 miles, and via the route shipments moved 71 miles.

The total number of ties shipped was 1,027 and the aggregate weight thereof 179,300 pounds. Freight charges thereon were collected in the total sum of \$366.51, at a rate of 13 cents per 100

pounds from Catron to Thebes, made up of 5 cents from Catron to Parma, and 8 cents from Parma to Thebes; and a rate of 13 cents per tie from Thebes to Chicago. The rate of 8 cents from Parma to Thebes was properly applied. An examination of the Commission's files, however, fails to disclose any rate from Catron to Parma, and the charges collected for this haul appear to have been without tariff authority.

No complaint is made of the rate from Thebes to Chicago, the complainant's contention being that the rate applied from Catron to Thebes was unreasonable to the extent that it exceeded 8 cents per 100 pounds, which was the rate maintained by the St. Louis Southwestern Railway on oak lumber from Catron to Thebes at the time of these shipments.

Prior to January 8, 1910, the published rate on lumber, including oak lumber and hewn oak ties, from Catron to Thebes via the St. Louis Southwestern Railway, was 8 cents per 100 pounds. On the above date the rate on hewn oak ties was canceled. The 8-cent rate on oak lumber was not canceled, however, and was in force at the time complainant's shipments moved. On July 3, 1910, the 8-cent rate on hewn oak ties was reestablished and is still in force. In *Signor Tie Co. v. I. & G. N. R. R. Co.*, 21 I. C. C., 615, and in numerous other cases we have held that the rate on ties should not exceed the rate on lumber of the same kind.

The situation presented in this case is analogous to that disclosed in *Samuels & Co. v. St. L. S. W. Ry. Co.*, 20 I. C. C., 646. In that case, as in this, the initial carrier refused to forward a shipment via the route selected by the shipper because there was no published rate via such route and forwarded it via another route in connection with which there was likewise no published rate. The charges collected thereon were found by the Commission to have been unreasonable to the extent that they exceeded a subsequently established rate via the route selected by the shipper, and damages were awarded accordingly against the initial line.

Upon the record we find that the rate charged for the movement from Catron to Thebes was unreasonable for the service demanded by complainant to the extent that it exceeded the rate of 8 cents per 100 pounds in force, via the route selected by the shipper, before and after the shipments moved, and that the failure of the initial carrier to have in force a rate for the transportation service demanded by complainant resulted in damage to complainant measured by the difference between the rate that should have been in force and the rate it was forced to pay.

We further find that the complainant made the shipments in accordance with the above statement of facts and paid charges



thereon at the rate herein found unreasonable; that complainant has been damaged to the extent of the difference between the amount paid and the amount it would have paid at the rate herein found reasonable, and that it is therefore entitled to an award of reparation from the St. Louis Southwestern Railway in the sum of \$89.65, with interest from December 17, 1910.

An order will be entered accordingly.

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No. 5282.

OHIO IRON & METAL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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*Submitted June 24, 1913. Decided December 3, 1913.*

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Certain demurrage and other charges incident to the transportation of two carloads of scrap iron from Milwaukee, Wis., to Portsmouth, Ohio, found not to have been due to misrouting by defendants, or otherwise in violation of law. Complaint dismissed.

*P. N. Collins and Abraham Block* for complainant.

*O. W. Dynes and C. A. Lahey* for Chicago, Milwaukee & St. Paul Railway Company.

*J. S. Patterson* for Chesapeake & Ohio Railway Company and Chesapeake & Ohio Railway Company of Indiana.

*Harry I. Allen* for Elgin, Joliet & Eastern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation doing a brokerage business in iron and steel with headquarters at Chicago, Ill. By complaint, filed November 4, 1912, it assails as unjust and unreasonable certain demurrage, drayage, and switching charges collected by defendants in connection with the transportation of two carloads of scrap iron from Milwaukee, Wis., to Portsmouth, Ohio, which charges are alleged to have been due to misrouting of the shipments by defendants. Reparation is asked in the sum of \$144.25. The claim was first filed with the Commission December 27, 1910.

The shipments described in the complaint moved in May and June, 1910, and weighed, respectively, 55,100 pounds and 66,200 pounds. On one of them charges were collected in the sum of \$184.51, including \$23 demurrage at Milwaukee, and \$60 demurrage, \$4 switching, and \$5.51 drayage at Portsmouth. On the other charges were collected in the sum of \$196.56, including \$26 demurrage at Milwaukee, and \$57 demurrage, \$4 switching, and \$6.62 drayage at Portsmouth. No complaint is made of the demurrage charges at Milwaukee.

The cars were forwarded from Milwaukee May 26, 1910, consigned to the Andrew Steel Company, Newport, Ky. Complainant purchased the consignment from the original shipper, M. M. Broad & Company, and while the cars were in transit, or on May 27, 1910, directed the Chicago, Milwaukee & St. Paul Railway to divert them to the Portsmouth Steel Company, Portsmouth, Ohio, but gave no instructions as to routing except that the shipments should be forwarded only at a rate of \$3.40 per gross ton. Pursuant to these instructions, new bills of lading were issued on May 28, 1910, by the Chicago, Milwaukee & St. Paul Railway—routing therein being shown via "E. J. & E. and C. C. & L."—and a rate of \$3.40 per gross ton inserted. The Chicago, Cincinnati & Louisville Railway, now the Chesapeake & Ohio Railway of Indiana, has no rails to Portsmouth, Ohio, and the Elgin, Joliet & Eastern Railway, in order to provide routing through to destination, inserted in its billing to the Chicago, Cincinnati & Louisville Railway routing via the Chesapeake & Ohio Railway as the delivering line.

The tariff in effect at the time of the movement named a rate of \$3.40 per gross ton, Milwaukee to Portsmouth, applicable via the Chicago, Milwaukee & St. Paul, Elgin, Joliet & Eastern, Chicago, Cincinnati & Louisville, and either the Chesapeake & Ohio, Norfolk & Western, or Baltimore & Ohio Southwestern as the delivering line. It did not indicate the industries or tracks to or upon which deliveries would be made under this rate, but provided for the application of the rules and regulations of the individual carriers parties thereto with respect to switching, drayage, demurrage, etc. The Chesapeake & Ohio Railway had no individual tariff of this kind applicable at Portsmouth at the time, but the switching tariff of the Baltimore & Ohio Southwestern showed the Portsmouth Steel Company at Portsmouth, Ohio, on the tracks of the Baltimore & Ohio Southwestern and the Norfolk & Western.

The Chesapeake & Ohio Railway has a freight warehouse at Portsmouth, but its rails only reach South Portsmouth, Ky., and traffic for Portsmouth, both carloads and less than carloads, is unloaded from cars to drays at South Portsmouth. The drays are ferried across the river to Portsmouth and all shipments are delivered at the freight

warehouse. The actual location of the plant of the Portsmouth Steel Company is at New Boston, Ohio, about 4 miles from Portsmouth proper, and the tariff that named the rate to Portsmouth also named a rate of \$3.40 per gross ton to New Boston as a nonagency station. So far as appears from the record the tariffs contained no information of the industries or delivery tracks at that point. Upon arrival of these shipments at South Portsmouth, Ky., the consignee demanded delivery at its plant, and as the Chesapeake & Ohio Railway could only accomplish such delivery at additional cost the shipments were refused by the consignee and remained undelivered until demurrage charges had accrued, as heretofore stated. Delivery was finally made upon instructions of the complainant by draying the shipments to the Baltimore & Ohio Southwestern tracks at a cost of 1 cent per 100 pounds, and the performance of a switching service by the Baltimore & Ohio Southwestern to the consignee's plant at a cost of \$4 per car.

It is complainant's contention that the Chesapeake & Ohio Railway should not have accepted the shipments for delivery to a point not reached by its rails; that the Chicago, Milwaukee & St. Paul was negligent in not routing the shipments to insure delivery to the consignee's plant without additional expense; and that the intermediate lines, in undertaking to furnish routing, should have done so via a route taking the rate prescribed by the shipper. It is a well-established principle that in the absence of tariff provisions to the contrary the transportation rates shown in a carrier's tariffs to a given point include delivery only on its own rails, and that shippers desiring delivery on the rails of another carrier ordinarily must bear the additional reasonable switching or transfer charges incident to such delivery. The Chesapeake & Ohio Railway offered a rate to Portsmouth, Ohio, but made no proffer in the tariff of delivery on other than its own terminal; and as to this shipment, it tendered such delivery, which was refused by the consignee. We are therefore unable to find that this carrier was negligent or that it exceeded its legal rights in accepting and transporting these shipments. The instructions given by the shipper to the Chicago, Milwaukee & St. Paul Railway made no mention of a delivering carrier or the location of consignee's plant. The carriers named by the initial line in its bill of lading and waybills were parties to the through rate of \$3.40 per gross ton; and since it may not be fairly assumed that carriers must know where consignees desire deliveries of traffic consigned to them, there was no obligation upon the initial carrier in this instance to do more than consign the shipments via transportation lines parties to the lawful rate indicated by the shipper. As to an intermediate line accepting a shipment at a junction point without full routing to destination, the Commission

pounds from Catron to Thebes, made up of 5 cents from Catron to Parma, and 8 cents from Parma to Thebes; and a rate of 13 cents per tie from Thebes to Chicago. The rate of 8 cents from Parma to Thebes was properly applied. An examination of the Commission's files, however, fails to disclose any rate from Catron to Parma, and the charges collected for this haul appear to have been without tariff authority.

No complaint is made of the rate from Thebes to Chicago, the complainant's contention being that the rate applied from Catron to Thebes was unreasonable to the extent that it exceeded 8 cents per 100 pounds, which was the rate maintained by the St. Louis Southwestern Railway on oak lumber from Catron to Thebes at the time of these shipments.

Prior to January 8, 1910, the published rate on lumber, including oak lumber and hewn oak ties, from Catron to Thebes via the St. Louis Southwestern Railway, was 8 cents per 100 pounds. On the above date the rate on hewn oak ties was canceled. The 8-cent rate on oak lumber was not canceled, however, and was in force at the time complainant's shipments moved. On July 3, 1910, the 8-cent rate on hewn oak ties was reestablished and is still in force. In *Signor Tie Co. v. I. & G. N. R. R. Co.*, 21 I. C. C., 615, and in numerous other cases we have held that the rate on ties should not exceed the rate on lumber of the same kind.

The situation presented in this case is analogous to that disclosed in *Samuels & Co. v. St. L. S. W. Ry. Co.*, 20 I. C. C., 646. In that case, as in this, the initial carrier refused to forward a shipment via the route selected by the shipper because there was no published rate via such route and forwarded it via another route in connection with which there was likewise no published rate. The charges collected thereon were found by the Commission to have been unreasonable to the extent that they exceeded a subsequently established rate via the route selected by the shipper, and damages were awarded accordingly against the initial line.

Upon the record we find that the rate charged for the movement from Catron to Thebes was unreasonable for the service demanded by complainant to the extent that it exceeded the rate of 8 cents per 100 pounds in force, via the route selected by the shipper, before and after the shipments moved, and that the failure of the initial carrier to have in force a rate for the transportation service demanded by complainant resulted in damage to complainant measured by the difference between the rate that should have been in force and the rate it was forced to pay.

We further find that the complainant made the shipments in accordance with the above statement of facts and paid charges

thereon at the rate herein found unreasonable; that complainant has been damaged to the extent of the difference between the amount paid and the amount it would have paid at the rate herein found reasonable, and that it is therefore entitled to an award of reparation from the St. Louis Southwestern Railway in the sum of \$89.65, with interest from December 17, 1910.

An order will be entered accordingly.

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No. 5282.

OHIO IRON & METAL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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*Submitted June 24, 1913. Decided December 3, 1913.*

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Certain demurrage and other charges incident to the transportation of two carloads of scrap iron from Milwaukee, Wis., to Portsmouth, Ohio, found not to have been due to misrouting by defendants, or otherwise in violation of law. Complaint dismissed.

*P. N. Collins* and *Abraham Block* for complainant.

*O. W. Dynes* and *C. A. Lahey* for Chicago, Milwaukee & St. Paul Railway Company.

*J. S. Patterson* for Chesapeake & Ohio Railway Company and Chesapeake & Ohio Railway Company of Indiana.

*Harry I. Allen* for Elgin, Joliet & Eastern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation doing a brokerage business in iron and steel with headquarters at Chicago, Ill. By complaint, filed November 4, 1912, it assails as unjust and unreasonable certain demurrage, drayage, and switching charges collected by defendants in connection with the transportation of two carloads of scrap iron from Milwaukee, Wis., to Portsmouth, Ohio, which charges are alleged to have been due to misrouting of the shipments by defendants. Reparation is asked in the sum of \$144.25. The claim was first filed with the Commission December 27, 1910.

Complainant ships about 20 carloads of its products per year from Marshalltown to its Kansas City branch, generally in barrels, in box cars. Some of these cars it loads to upward of 62,000 pounds, but the loading of the cars upon which reparation is sought, so far as petroleum products are concerned, averaged 32,471 pounds, the heaviest loading being 46,050 pounds. The carload minimum for this traffic, applicable to a standard box car, is 26,000 pounds.

Defendants assert that the rate of 22 cents from Marshalltown to Kansas City, as compared with the rate of 17 cents in the opposite direction, is justified on the ground that there is a greater volume of this traffic and heavier loading of cars northbound than southbound; that most of the northbound traffic moves in tank cars loaded to 60,000 pounds or more, whereas complainant's shipments are generally in barrels and do not load so heavily per car. It appears from the record that the advantage in the heavier loading of tank cars northbound is, to a certain extent, offset by the empty back haul of that type of cars, while box cars may be reloaded from any point. Defendants did not furnish detailed information concerning the extent of the northbound movement of petroleum products, but their witnesses testified that the movement is large.

The short-line distance from Marshalltown to Kansas City (via the Chicago Great Western Railroad) is 279 miles. The rate of 22 cents produces revenue of 1.58 cents per ton-mile, and the rate of 17 cents revenue of 1.22 cents per ton-mile. The ton-mile earnings under the 17-cent rate are somewhat higher than certain rates on the same commodities that have been prescribed by the Commission in western territory. In *National Petroleum Asso. v. C., M. & St. P. Ry. Co.*, 14 I. C. C., 287, the Commission established a rate of 24.3 cents from Chicago, Ill., to Omaha, Nebr., a distance of 493 miles. In *National Petroleum Asso. v. M. P. Ry. Co.*, 18 I. C. C., 593, the Commission prescribed a rate of 19 cents from Coffeyville, Kans., to Memphis, Tenn., a distance of 469 miles, and a rate of 17 cents from Coffeyville to Omaha, a distance of 362 miles.

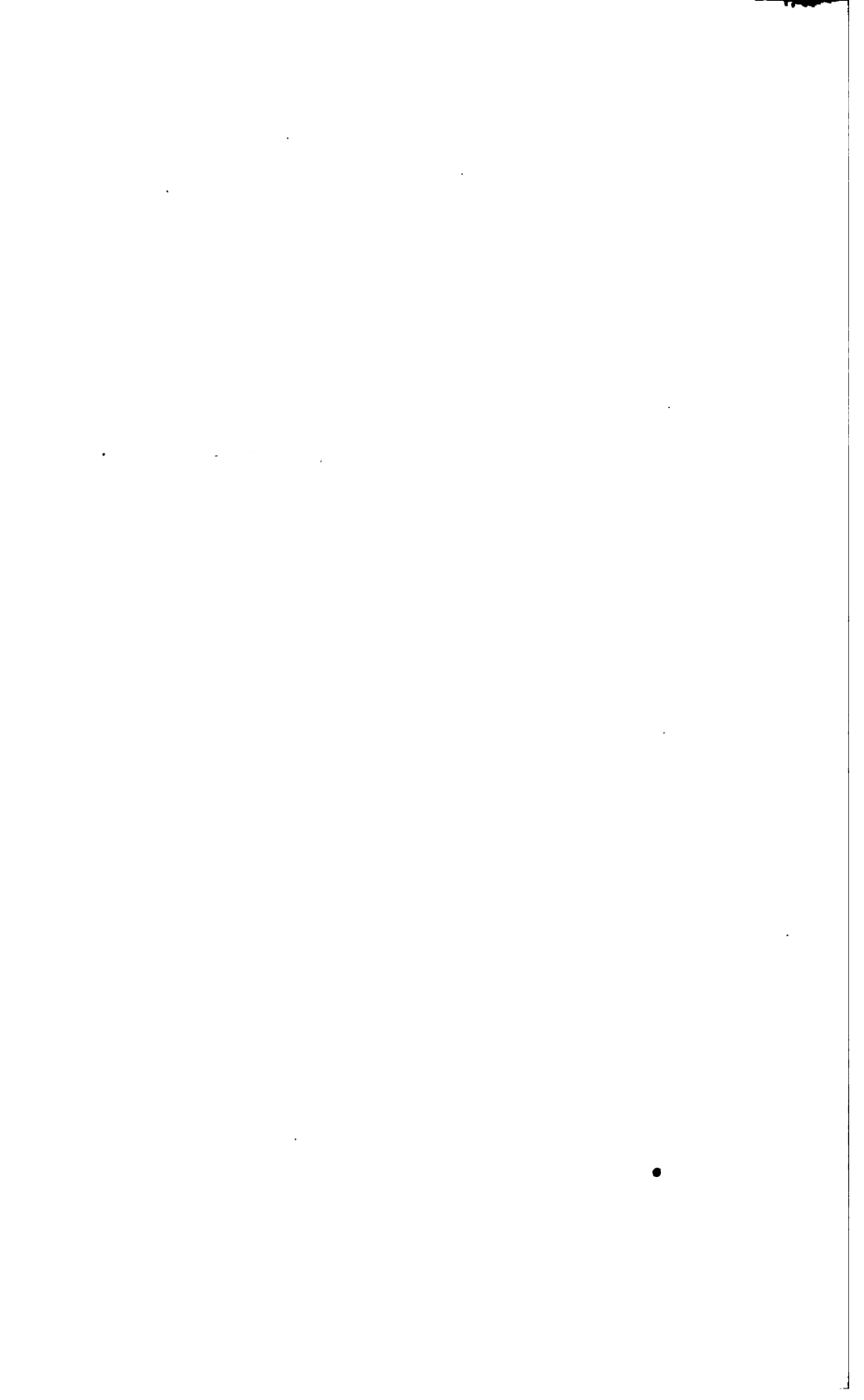
Upon consideration of the facts of record, we are of the opinion, and find, that defendants' present rate of 22 cents per 100 pounds for the transportation of petroleum and its products from Marshalltown to Kansas City is unreasonable to the extent that it exceeds 17 cents, and that defendants should be required to establish for the future a rate not in excess of 17 cents. We are further of the opinion that complainant has been damaged to the extent that it has paid freight charges upon basis of a rate in excess of 17 cents and that it is entitled to reparation accordingly. Complainant will be expected to prepare a statement showing as to each shipment from Marshalltown to Kansas City, upon which reparation is claimed, the

date of movement, route, weight, car number, and initials, rate charged, and the amount of reparation claimed. This statement should be submitted, with the freight bills covering the same, to the defendants for verification by them. Upon receipt of a statement so prepared by complainant and verified by defendants, together with the billing, the Commission will take the matter up with a view to the issuance of an order of reparation.

It appears from the record that certain of the shipments upon which reparation is sought moved over the Iowa Central Railway and the Wabash Railroad. The Iowa Central is not a defendant. Prior to the filing of this complaint that road was purchased by the Minneapolis & St. Louis Railway Company, which is a defendant, and the latter went into possession on January 1, 1912, assuming all the assets and liabilities of the Iowa Central. Under these circumstances, as to shipments which moved via the Iowa Central, reparation will be awarded against the Minneapolis & St. Louis.

An order will be entered at this time prescribing the maximum rate for the future in accordance with the conclusions herein announced.

28 I. C. C.





CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED  
REPORT DURING THE TIME COVERED BY THIS VOLUME.

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3667. ARIZONA RAILWAY COMMISSION *v.* WELLS FARGO & COMPANY. Merchandise and general special express rates between points in Arizona and from various points of origin to points in Arizona. *George J. Stoneman* for complainant. *John H. Mooers* and *Charles W. Stockton* for defendant. Dismissed, December 2, 1913. Case governed by conclusions reached and order heretofore entered in Docket No. 4198, entitled In the Matter of Express Rates, Practices, Accounts and Revenues.

4000. C. H. GODFREY & SON *v.* GRAHAM & MORTON TRANSPORTATION COMPANY ET AL. Rates on canned fruit from Benton Harbor, Mich., to Rockford, Ill. *H. Meyring* for complainant. *A. A. Wright* and *F. P. Eyman* for Chicago & North Western Railway Company. Transferred to Special Docket for adjustment, September 20, 1913.

4234. KNICKERBOCKER ICE COMPANY ET AL *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Rates on ice from points in Wisconsin to Chicago, Ill., and points taking Chicago rates. *Borders & Walter* for complainants. *Alfred H. Bright*, *C. C. Wright*, and *Edward M. Hyzer* for defendants. Transferred to Special Docket for adjustment, September 8, 1913.

4486. BROOK-RAUCH MILL & ELEVATOR COMPANY ET AL *v.* ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY. Lease of elevator at Argenta, Ark., at a nominal rental. *Charles Jacobson* for complainants. *M. L. Clardy* and *Henry Herbel* for defendant. Dismissed, October 6, 1913.

4518. STANDARD OIL COMPANY *v.* PENNSYLVANIA COMPANY ET AL. Rates on stoves from Cleveland, Ohio to various western points. *Edgar Bogardus* for complainant. *F. S. Hollands*, *A. P. Burgwin*, *James Stillwell*, *Wallace T. Hughes* and *W. F. Dickinson* for defendants. Transferred to Special Docket for adjustment, December 17, 1913.

4563. GUNTERSVILLE NAVIGATION COMPANY *v.* SOUTHERN RAILWAY COMPANY ET AL. Through routes and joint rates from points and landings on the Tennessee River between Chattanooga, Tenn.,

and Lock Six, Ala. No appearance for complainant. *Claudian B. Northrop, Charles Barham, and E. H. Dulaney* for defendants. Dismissed for want of prosecution, January 13, 1913.

4634. MINNEAPOLIS THRESHING MACHINE COMPANY *v.* CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY. Fifty-foot car ordered for shipment of threshers and parts from Kansas City, Mo., to El Reno, Okla. Two smaller cars furnished. *Joseph A. Hosp and J. H. McDonald* for complainant. *W. F. Dickinson, R. G. Brown, O. W. Dynes, J. T. Conley, W. H. Bremner, and S. G. Lutz* for defendants. Transferred to Special Docket for adjustment, October 20, 1913.

4720. KENNESSEE COAL COMPANY *v.* KENTUCKY & TENNESSEE RAILWAY ET AL. Rates on coal, forest products, and other merchandise from Freeman, Ky., to Cincinnati, Ohio, Chattanooga, Tenn., Atlanta, Ga., and various other interstate points. No appearance for complainant. *James N. Sharp and M. Carter Hall* for defendants. Dismissed for want of prosecution, July 16, 1913.

4789. J. W. LEAVITT & COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Rates on auto trucks from Hartford, Wis., to San Francisco, Cal. *W. W. Brackett* for complainant. *E. W. Camp, and C. W. Durbrow* for defendants. Dismissed on motion of complainant, November 4, 1913.

4820. ALTHOFF MANUFACTURING COMPANY *v.* DENVER & RIO GRANDE RAILROAD COMPANY ET AL. Rates on ice machinery from York, Pa., to Rifle, Colo., and other points. *C. W. Durbin* for complainant. *E. N. Clark* for Denver & Rio Grande Railroad Company. Transferred to Special Docket for adjustment, October 20, 1913.

4884. SCULLY STEEL & IRON COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Rates on bar steel from Bay View, Wis., to Oregon, Ill. *H. J. Lord* for complainant. *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company. Transferred to Special Docket for adjustment, July 3, 1913.

4949. DEWEY PORTLAND CEMENT COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL. Rates on lubricating oil from Whiting, Ind., to Dewey, Okla. *G. M. Stephen* for complainant. *D. L. Meyers and J. W. Allen* for defendants. Transferred to Special Docket for adjustment, October 20, 1913.

4959. O'GARA COAL COMPANY ET AL. *v.* CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL. Rates on coal from Harrisburg, Ill., to Chicago, Ill. *Guerin, Gallagher & Barrett* for complainants. *O. E. Butterfield* for defendants. Dismissed on motion of complainants, June 30, 1913.

4977. INDIANA SEWER PIPE COMPANY *v.* CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY ET AL. Rates on sewer pipe and wall

coping from Mecca, Ind., to points in Wisconsin, Minnesota, and Upper Michigan. No appearance for complainant. *E. H. Seneff* and *Joseph J. Clark* for Chicago & Eastern Illinois Railroad Company. Dismissed, December 1, 1913.

5021. *MUNRO MERCANTILE COMPANY v. COLORADO MIDLAND RAILWAY COMPANY ET AL.* Rates on boots and shoes from Chicago, Ill., to Rifle, Colo. *C. W. Durbin*, *Carle Whitehead*, and *Albert L. Vogl* for complainant. *W. F. Dickinson* and *Henry T. Rogers* for defendants. Dismissed on motion of complainant, January 13, 1913.

5035. *R. J. DOWD KNIFE WORKS v. WABASH RAILROAD COMPANY ET AL.* Rates on emery wheels from Detroit, Mich., to Beloit, Wis. *O. M. Rogers* for complainant. *E. R. Newman*, *C. C. Wright*, and *A. H. Lossow* for defendants. Transferred to Special Docket for adjustment, September 9, 1913.

5084. *J. L. NORVELL MERCANTILE COMPANY v. DENVER, NORTH-WESTERN & PACIFIC RAILWAY COMPANY ET AL.* Rates on boots and shoes from Kansas City, Mo., to Steamboat Springs, Colo. *C. W. Durbin* for complainant. *Hughes & Dorsey*, *E. I. Thayer*, and *W. F. Dickinson* for defendants. Dismissed on motion of complainant, January 13, 1913.

5126. *FREIGHT BUREAU OF CHAMBER OF COMMERCE OF MACON, GEORGIA v. NORFOLK & WESTERN RAILWAY COMPANY ET AL.* Class and commodity rates between Virginia Cities and Macon, Ga. *B. Gilham* for complainant. *R. Walton Moore*, and *C. D. Drayton* for defendants. Dismissed on motion of complainant, June 23, 1913.

5160. *ALFRED C. SHEELER v. NEW JERSEY & PENNSYLVANIA TRACTION COMPANY.* Rates on newspapers between Trenton and Lambertville, N. J. *F. J. Hallahan* for complainant. *F. S. Katzenbach, Jr.*, and *Sidney L. Wright* for defendant. Complaint satisfied. Dismissed, July 8, 1913.

5167. *CHATTANOOGA SEWER PIPE & FIRE BRICK COMPANY v. NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.* Rates on hollow fireproof building tile from Chattanooga, Tenn., to Rome, Ga. *R. B. Shepherd* for complainant. *R. Walton Moore* and *George Butler* for defendant. Dismissed, June 30, 1913. Matters involved pending in another case by same complainant.

5173. *HEN-E-TA BONE COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.* Rates on crude ground phosphate rock from Mount Pleasant, Tenn., to Flemington, W. Va. *Warder & Robinson* for complainant. *Edward Barton*, *Wm. C. Coleman*, *Albert S. Brandeis*, and *W. A. Northcutt* for defendants. Transferred to Special Docket for adjustment, September 9, 1913.

5191. *ANDERSON-TULLY COMPANY ET AL. v. MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL.* Demurrage on 28 I. C. C.

export shipments of lumber, logs, and staves at New Orleans, Westwego, Algiers, Gretna, and Port Chalmette, La. *John R. Walker, J. H. Townshend, Edgar M. Cahn, and Louis Palmer* for complainants. *H. A. Scandrett, Jos. Lallande, James G. Wilson, Fred H. Wood, Fred G. Wright, Henry G. Herbel, H. B. Helm, E. C. D. Marshall, N. M. Leach, and A. D. Lightner* for defendants. Complaint satisfied. Dismissed, December 8, 1913.

5199. BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, in behalf of CONRAD MERCANTILE COMPANY *v.* GREAT NORTHERN EXPRESS COMPANY. Rates on fruit from Wenatchee, Wash., to Conrad, Mont. *O. W. Tong* for complainant. *John F. Finerty, Jr.*, for defendant. Dismissed on motion of complainant, September 4, 1913.

5225. ERNEST M. TRAIL *v.* WASHINGTON & OLD DOMINION RAILWAY COMPANY. Passenger rates from Herndon, Va., to Washington, D. C. *Wolf & Cohen*, by *Fred S. Swindell*, for complainant. No appearance for defendant. Dismissed on motion of complainant, July 2, 1913.

5320. ARIZONA CORPORATION COMMISSION *v.* ARIZONA EASTERN RAILROAD COMPANY ET AL. Switching charges at Ray, Ray Junction, and Kelvin, Ariz. *W. P. Geary* and *F. A. Jones* for complainant. *H. A. Scandrett, E. W. Clapp, James G. Wilson, and Chalmers & Kent*, by *L. H. Chalmers*, for defendants. Complaint satisfied. Dismissed, July 7, 1913.

5342. WILLIAMS & SHELTON COMPANY ET AL. *v.* SEABOARD AIR LINE RAILWAY ET AL. Rates on cotton garments from Baltimore, Md., to Charlotte, N. C. *N. V. Porter* and *C. L. Watts* for complainants. *R. Walton Moore* and *J. S. Lemmon* for defendants. Dismissed on motion of complainants, June 30, 1913.

5359. CHAMBER OF COMMERCE OF THE CITY OF MILWAUKEE *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Rates on grain and flaxseed from Iowa, Minnesota, and South Dakota to Milwaukee and Superior, Wis., Minneapolis and Duluth, Minn. *Miller, Mack & Fairchild* for complainant. *C. C. Wright, Robert H. Widdicombe, and O. W. Dynes* for defendants. Dismissed on motion of complainant, December 1, 1913.

5364. KANSAS CITY MILLERS' CLUB ET AL. *v.* KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL. Rates on wheat and flour from Lower Missouri River points to Gulf Ports for export. *H. G. Wilson* for complainant. *J. M. Souby* and *Henry G. Herbel* for defendants. Complaint satisfied. Dismissed, October 3, 1913.

5404. BOOTH-KELLY LUMBER COMPANY *v.* AMADOR CENTRAL RAILROAD COMPANY ET AL. Rates on forest products between Wendling, Oregon, and points south of Ashland, Oregon. *Joseph N.*  
23 I. C. C.

*Teal* and *W. C. McCulloch* for complainant. No appearance for defendants. Dismissed on motion of complainant, June 30, 1913.

5469. *PENDLETON GRAIN COMPANY v. TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS*. Absorption of switching charges at East St. Louis, Ill. *R. J. Pendleton* for complainant. *J. L. Howell* for defendant. Dismissed on motion of complainant, December 1, 1913.

5470. *C. C. SMOOT & SONS COMPANY v. SOUTHERN RAILWAY COMPANY*. Rates on scrap iron from Washington, D. C., to North Wilkesboro, N. C. No appearance for complainant. *M. P. Callaway* for defendant. Dismissed on motion of complainant, July 16, 1913.

5482. *WADSWORTH SALT COMPANY ET AL. v. PENNSYLVANIA COMPANY ET AL.* Rates on salt from Wadsworth and Rittman, Ohio, to points on the Pennsylvania Lines. *Walter E. McCornack* for complainants. *James Stillwell*, *Archibald Fries*, and *T. H. Burgess* for defendants. Dismissed, July 16, 1913.

5489. *FREIGHT BUREAU, CHAMBER OF COMMERCE, MACON, GEORGIA v. MACON, DUBLIN & SAVANNAH RAILROAD COMPANY ET AL.* Rates on salt from Louisiana producing points to Macon, Ga. *B. Gilham* and *A. J. Long* for complainant. *M. P. Callaway* and *Joseph Lallande* for defendants. Dismissed on motion of complainant, November 4, 1913.

5516. *BUTCHER FOLDING CRATE COMPANY v. MICHIGAN CENTRAL RAILROAD COMPANY ET AL.* Rates on crate material, k. d., from Vassar, Mich., to Mineola, Tex. No appearance for complainant. *Henry G. Herbel*, *C. C. P. Rausch*, and *Ernest S. Ballard* for defendants. Dismissed for want of prosecution, November 4, 1913.

5542. *C. C. GRISWOLD ET AL. v. CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY*. Failure to make 500 pounds allowance for car fittings on shipments of stone from Ellettsville, Ind., to Detroit, Mich. No appearances. Dismissed for want of prosecution, July 24, 1913.

5549. *STEARNS & CULVER LUMBER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.* Rate on locomotive from Erie, Pa., to Milton, Fla. *G. M. Stephen* for complainant. *William Burger* and *A. E. Huenerfager* for defendants. Dismissed on motion of complainant, July 16, 1913.

5576. *BRIGGS & TURIVAS v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.* Rates on scrap iron from Mayville, Wis., to Harvey, Ill. No appearance for complainant. *O. W. Dynes* and *C. A. Lahey* for defendants. Dismissed for want of prosecution, October 10, 1913.

5613. *WESTERN OHIO CREAMERY COMPANY v. CINCINNATI NORTHERN RAILROAD COMPANY ET AL.* Rates on cream from points in Indiana to Greenville, Ohio. *L. M. Lancaster* for complainant.

*D. P. Connell* for defendants. Dismissed on motion of complainant, July 24, 1913.

5636. *KANSAS CITY HAY COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.* Rates on mixed carload of hay and oats from Kansas City, Mo., to Calico Rock, Ark. No appearance for complainant. *Fred G. Wright*, and *C. C. P. Rausch* for defendants. Dismissed for want of prosecution, July 16, 1913.

5645. *G. E. PATTESON & COMPANY v. ATLANTIC CITY RAILROAD COMPANY ET AL.* Rates on mixed feed from Memphis, Tenn., to Eastern Cities and Virginia Cities. *C. B. Stafford* for complainant. *Wm. Jay Turner*, *D. T. Lawrence*, *W. P. Levis*, *H. D. Palmer*, *Martin L. Clardy*, *Henry G. Herbel*, *Fred G. Wright*, *Chas. Heebner*, *E. D. Hotchkiss*, *C. A. Hayes*, *S. S. Perry*, *T. H. Burgess*, *M. B. Pierce*, *John B. Kerr*, *John L. Seager*, *William A. Colston*, *William Burger*, *Edward Barton*, *Wm. C. Coleman*, *R. Walton Moore*, *A. P. Burgwin*, *L. E. Hinkle*, *Fred H. Wood*, *O. E. Butterfield*, and *Clyde Brown* for defendants. Complaint satisfied. Dismissed, August 4, 1913.

5652. *LOWERY-HANKS COMPANY v. SOUTHERN EXPRESS COMPANY.* Rates on fruit, vegetables, and candy from Johnson City, Tenn., to Norton, Va., and other points in Virginia. *E. D. Hanks* for complainant. No appearance for defendant. Complaint satisfied. Dismissed, August 6, 1913.

5654. *BANGOR & AROOSTOOK RAILROAD COMPANY v. MAINE CENTRAL RAILROAD COMPANY ET AL.* Establishment of through routes, joint through rates, and interchange of traffic at Northern Maine Junction. *Strong & Cadwalader*, *John G. Johnson*, and *John Henry Hammond* for complainant. *Seth M. Carter*, *T. E. Byrnes*, *Bruce Wyman*, and *Charles H. Blatchford* for defendants. Complaint satisfied. Dismissed, July 12, 1913.

5658. *SMALLEY MANUFACTURING COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.* Rates on l. c. l. shipments of power feed cutters from Manitowoc, Wis., to points in other States. No appearance for complainant. *Robert H. Widdicombe*, and *A. F. Cleveland* for Chicago & North Western Railway Company. Complaint satisfied. Dismissed, November 4, 1913.

5677. *ST. LOUIS COTTON EXCHANGE v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Rates on cotton from points in Oklahoma to St. Louis, Mo., and East St. Louis, Ill. *P. H. Partridge* for complainant. *Joseph M. Bryson*, *C. S. Burg*, *Robert Dunlap*, *T. J. Norton*, *W. F. Dickinson*, and *Fred H. Wood* for defendants. Dismissed without prejudice, on petition of complainant, July 1, 1913.

5683. *JACOB KERPER ET AL. v. IOWA NORTHERN RAILWAY COMPANY ET AL.* Establishment of through routes and joint rates.

*J. H. Henderson and Dwight N. Lewis* for complainants. *Winston, Payne, Strawn & Shaw*, and *S. G. Durant* for defendants. Dismissed on motion of complainants, August 27, 1913.

5718. *AMERICAN LAND, TIMBER & STAVE COMPANY ET AL. v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.* Rates on oak staves, heading, and lumber from Pettigrew and Ravendon, Ark., to points in Pennsylvania, New York, and other States. *John B. Walker* for complainants. *Charles Heebner, T. H. Burgess, M. B. Pierce, S. S. Perry, H. D. Palmer, O. E. Butterfield*, and *Clyde Brown* for defendants. Dismissed on motion of complainant, June 30, 1913.

5722. *D. E. STEPHAN v. CHESAPEAKE & POTOMAC TELEPHONE COMPANY.* Telephone rates between the District of Columbia and Bethesda, Md. *Octave A. Bigoness* and *D. E. Stephan* for complainant. *Henry B. F. Macfarland*, and *W. F. Crowell* for defendant. Complaint satisfied. Dismissed, December 12, 1913.

5726. *BRUNSWICK-BALKE-COLLENDER COMPANY v. LAKE SUPERIOR & ISHPEMING RAILWAY COMPANY ET AL.* Rates on lumber from Big Bay, Mich., to Chicago, Ill. *James L. Mullin* and *Ryan & Condon* for complainant. *William P. Belden, R. H. Widdicombe*, and *A. F. Cleveland* for defendants. Dismissed without prejudice by agreement of parties, September 19, 1913.

5727. *UNIVERSITY OF WISCONSIN v. CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.* Rates on steam pumps from Ivorydale, Ohio, to Madison, Wis. *J. H. Wheelock* for complainant. *A. F. Cleveland* for Chicago & North Western Railway Company. Transferred to Special Docket for adjustment, December 9, 1913.

5736. *OMAHA GRAIN EXCHANGE v. GREAT NORTHERN RAILWAY COMPANY ET AL.* Refusal to furnish cars for shipments of grain from points in South Dakota to Omaha, South Omaha, and Council Bluffs. *Edward P. Smith* for complainant. *R. B. Scott* and *E. C. Lindley* for defendants. Dismissed on motion of complainant, July 2, 1913.

5739. *ALEXANDER H. ERICKSON COMPANY, Successors to EYTINGE-ERICKSON COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.* Inland proportional on electrical supplies from Chicago, Ill., to Tacoma, Wash., destined to Sydney, Australia. No appearances. Dismissed for want of prosecution, July 24, 1913.

5750. *NORTHERN WOOD COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.* Rates on wood fuel from Oconto, Wis., to Homewood, Ill. No appearance for complainant. *R. G. Widdicombe* and *A. F. Cleveland* for Chicago & North Western Railway Company. Dismissed for want of prosecution, July 24, 1913.

5753. DELPHOS MANUFACTURING COMPANY *v.* PENNSYLVANIA COMPANY ET AL. Rates on spelter from East St. Louis, Ill., to Delphos, Ohio. *Hugh Holmes* for complainant. *L. E. Hinkle* for defendants. Dismissed on motion of complainant, September 22, 1913.

5760. EASTERN SHORE DEVELOPMENT STEAMSHIP COMPANY *v.* BALTIMORE, CHESAPEAKE & ATLANTIC RAILWAY COMPANY ET AL. Through passenger service from Washington, D. C., to Ocean City, Md. *A. J. McIntosh* and *Ennalls Waggaman* for complainant. *Ralph Robinson*, *Henry Wolf Bikle*, *I. E. Ballard*, and *S. R. Bowen* for defendants. Complaint satisfied. Dismissed, September 8, 1913.

5761. A. B. CURRIE COMPANY *v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL. Misrouting of shipment of coal from New Baden, Ill., to West Point, Nebr. *Arthur B. Hayes* for complainant. *C. C. Wright*, *Robert H. Widdicombe*, and *R. Walton Moore* for defendants. Complaint satisfied. Dismissed, September 4, 1913.

5765. OWENS BOTTLE MACHINE COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL. Rates on glass bottles from Fairmont, W. Va., to Madison, Ind. *Charles G. Cunningham* for complainant. *A. P. Burgwin*, *L. E. Hinkle*, and *A. S. Bowie* for defendants. Complaint satisfied. Dismissed, September 8, 1913.

5780. S. B. LOVETT, for the use and account of MILLIREN-BUCHANAN HARDWARE COMPANY *v.* CHICAGO, RACINE & MILWAUKEE LINE ET AL. Rate on motor cycle from Milwaukee, Wis., to Farwell, Tex. *J. S. Bolton* for complainant. *James S. Coleman* and *Chas. A. Donlin* for defendants. Dismissed for want of prosecution, July 23, 1913.

5784. HAARMANN VINEGAR & PICKLE COMPANY *v.* MISSOURI PACIFIC RAILWAY COMPANY. Rates on vinegar in barrels from Omaha, Nebr., to Kansas City, Mo. *C. E. Childe* for complainant. *Fred G. Wright* for defendant. Dismissed for want of prosecution, August 18, 1913.

5796. W. A. PLUMMER MANUFACTURING COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY. Rates on iron hammocks from Chicago, Ill., to San Francisco, Cal. *Brown & Baer* for complainant. *E. W. Camp* for defendant. Dismissed on motion of complainant, November 4, 1913.

5797. J. ROSENBAUM GRAIN COMPANY *v.* UNION PACIFIC RAILROAD COMPANY. Elevation allowances at Kansas City and Armourdale, Kans. *Hal. C. Bangs* for complainant. *L. T. Wilcox* for defendant. Dismissed on motion of complainant, July 24, 1913.

5798. L. M. POTTS *v.* CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL. Rates on cotton, c. l., from points in Oklahoma to Oakland, Cal. *L. M. Potts* for complainant. *Pat Portel* for Chicago,



Rock Island & Pacific Railway Company. Complaint satisfied. Dismissed, August 18, 1913.

5812. **AMERICAN METAL COMPANY (LTD.) v. CENTRAL RAILROAD COMPANY OF NEW JERSEY ET AL.** Rates on copper bars from Newark, N. J., to Worcester, Mass., Darlington, R. I., and Ansonia, Conn. *Charles Conradis* and *Arthur B. Hayes* for complainant. *S. S. Perry* for New York, New Haven & Hartford Railroad Company. Transferred to Special Docket for adjustment, November 24, 1913.

5852. **THOMAS W. HOOKER v. CENTRAL VERMONT RAILWAY COMPANY ET AL.** Rates on lumber, c. l., from Bethel, Vt., to Hartford and New Britain, Conn. *Schutz & Edwards* for complainant. No appearance for defendants. Dismissed on motion of complainant, July 14, 1913.

5858. **HINSCH-BRISCOE COAL COMPANY (INC.) v. VANDALIA RAILROAD COMPANY ET AL.** Misrouting of shipment of coal from Colfax, Ind., to Atkinson, Ind. *J. H. Briscoe* for complainant. *O. E. Butterfield* and *Clyde Brown* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company. Complaint satisfied. Dismissed, November 4, 1913.

5861. **RED BANK MILLS v. PENNSYLVANIA RAILROAD COMPANY ET AL.** Rates on grain from points in Illinois, Indiana, and Ohio to New Bethlehem, Pa. *D. M. Geist* for complainant. *Henry Wolf Bikle* and *A. P. Burgwin* for defendants. Complaint satisfied. Dismissed, November 4, 1913.

5870. **ST. MATTHEWS PRODUCE EXCHANGE (INC.) v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.** Rates on potatoes, onions, and other vegetables from points in Kentucky to points in Central Freight Association Territory. *R. W. Hite* for complainant. *N. W. Proctor* and *D. M. Goodwyn* for defendant. Dismissed without prejudice on motion of complainant, November 4, 1913.

5871. **LUDOWICI CELADON COMPANY v. CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY.** Rates on clay, c. l., from Hillsdale, Ind., to Chicago Heights, Ill. *O. M. Rogers* for complainant. *E. H. Seneff* and *C. B. Cardy* for defendant. Dismissed on motion of complainant, August 7, 1913.

5878. **REPUBLIC FLOUR MILLS COMPANY v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.** Rates on grain and grain products from St. Louis, Mo., to Vivian and Zwolle, La. *W. H. Marshall* for complainant. *Fred H. Wood*, *J. M. Souby*, and *G. H. Hamilton* for defendants. Dismissed on motion of complainant, December 8, 1913.

5925. **OETTING BROTHERS ICE COMPANY v. MINNEAPOLIS, ST. PAUL & SAULT STE MARIE RAILWAY COMPANY ET AL.** Rates on ice from Channel Lake and Camp Lake, Wis., to Chicago, Ill., and  
28 I. C. C.

absorption of switching charges. *M. F. Gallagher* for complainant. *Samuel D. Snow, Thos. C. Augerstein, Winston, Payne, Strawn & Shaw, Albert H. Lossow, C. G. Austin, A. P. Humburg, and R. V. Fletcher* for defendants. Dismissed on motion of complainant, September 19, 1913.

5935. MERCHANTS FREIGHT BUREAU OF LITTLE ROCK, ARKANSAS, for the MOUNT OLIVE STAVE COMPANY *v.* ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL. Rates on staves and heading, c. l., from Batesville, Ark., to Rogers, Bentonville, and Fayetteville, Ark. *A. R. Bragg* for complainant. *Martin L. Clardy, Henry G. Herbel, Fred G. Wright, and Fred H. Wood* for defendants. Dismissed on motion of complainant, September 22, 1913.

5953. CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, for and in behalf of the ARNETT TELEPHONE COMPANY *v.* AMERICAN TELEPHONE & TELEGRAPH COMPANY ET AL. Establishment of through routes and joint rates. *J. E. Love, A. P. Watson, and J. H. Hyde* for complainant. No appearance for defendants. Complaint satisfied. Dismissed, August 19, 1913.

5970. MARSEILLES WRAPPING PAPER COMPANY *v.* CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL. Rates on scrap paper from Topeka, Kans., and Joplin, Mo., to Marseilles, Ill. *G. M. Stephen and Samuel J. Bolton* for complainant. *F. H. Wood, F. C. Dumbbeck, and W. F. Dickinson* for defendants. Complaint satisfied. Dismissed, December 1, 1913.

5996. AMERICAN LUMBER & MANUFACTURING COMPANY *v.* CHESAPEAKE & OHIO RAILWAY COMPANY ET AL. Rates on poplar lumber from Raleigh, W. Va., to Pittsburgh, Pa. *Charles A. Droz* for complainant. *E. D. Hotchkiss* for Chesapeake & Ohio Railway Company. Complaint satisfied. Dismissed, November 4, 1913.

6002. PEYCKE BROTHERS COMMISSION COMPANY *v.* ILLINOIS CENTRAL RAILROAD COMPANY ET AL. Rates on potatoes, c. l., from New Orleans, La., to Kansas City, Mo. *E. H. Hogueland* for complainant. *R. Walton Moore, M. Carter Hall, Thomas Bond, and C. C. P. Rausch* for defendants. Dismissed without prejudice on motion of complainant, December 1, 1913.

6013. LANE BROTHERS COMPANY *v.* VIRGINIAN RAILWAY COMPANY. Rates on coal from Slab Fork, W. Va., to Alta Vista, Va. *Wade H. Ellis and A. E. L. Leckie* for complainant. *E. W. Knight and G. A. Wingfield* for defendant. Dismissed on motion of complainant, September 22, 1913.

6049. L. D. LEACH & COMPANY *v.* SOUTHERN RAILWAY COMPANY ET AL. Rates on wood railroad ties from Wayne City, Ill., to Buffalo, Iowa. *G. M. Stephen* for complainant. *E. H. Seneff and C. B.*

*Cardy* for Chicago & Eastern Illinois Railroad Company. Dismissed on motion of complainant, October 3, 1913.

6057. DOLESE BROTHERS COMPANY *v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL. Rate on steam shovel dipper handle from South Milwaukee, Wis., to Buffalo, Iowa. *G. M. Stephen* for complainant. *A. F. Cleveland* and *Wallace T. Hughes* for defendants. Dismissed on motion of complainant, December 1, 1913.

6107. WYETH HARDWARE & MANUFACTURING COMPANY *v.* CHICAGO GREAT WESTERN RAILROAD COMPANY ET AL. Rates on horse blankets from Burlington, Wis., to St. Joseph, Mo. No appearance for complainant. *Ewing Duval* for Chicago Great Western Railroad Company. Dismissed on motion of complainant, December 1, 1913.

6161. SCHLOSS & KAHN *v.* LOUISVILLE & NASHVILLE RAILROAD COMPANY. Rates on bagging and ties from Montgomery, Ala., to New Orleans, La. *Julien M. Strassburger* for complainant. *William A. Colston* and *Edward D. Mohr* for defendant. Dismissed on motion of complainant, December 9, 1913.

6226. D. H. HALL LUMBER COMPANY *v.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL. Rates on lumber from New Albany, Miss., to South Bend, Ind., and St. Joseph, Mich. *W. N. Webb* for complainant. *R. Walton Moore*, *Thomas Bond*, *O. E. Butterfield*, *Clyde Brown*, *E. H. Seneff*, *C. B. Cardy*, and *Winston, Payne, Strawn & Shaw* for defendants. Dismissed on motion of complainant, December 8, 1913.



REPARATION CASES DISPOSED OF BY THE COMMISSION IN  
FORMAL BUT UNREPORTED DECISIONS DURING THE TIME  
COVERED BY THIS VOLUME.

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3056 (U. R. No. A-263). *COMMERCIAL CLUB OF OMAHA v. ANDERSON & SALINE RIVER RAILWAY COMPANY ET AL.* Supplemental report issued modifying certain orders in subnumbers in the original report, 27 I. C. C. 302. Appearances same as in original report. October 7, 1913. Reparation awarded in the amounts specified in the original orders.

4740 (U. R. No. A-264). *FLORIDA CITRUS EXCHANGE v. SEABOARD AIR LINE RAILWAY ET AL.* Unreasonable rates on grape fruit and oranges from Bay View, Fla., to Dallas, Tex. *H. S. Hampton* for complainant. *M. C. Hall* for defendants. October 7, 1913. Reparation awarded for \$51.72.

4785 (U. R. No. A-265). *LYSLE MILLING COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.* Expenditures in lining and padding cars. *H. G. and J. F. Wilson* for complainant. *R. B. Scott* for defendant. October 7, 1913. Reparation denied.

4426 and 5233 (U. R. No. A-266). *GOLDFIELD CONSOLIDATED MINES COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.* *GOLDFIELD CONSOLIDATED MILLING & TRANSPORTATION COMPANY v. SAME.* Rates on sulphuric acid from San Francisco, Cal., to Goldfield, Nev., not found unreasonable. *W. P. Seeds* and *G. S. Minott* for complainants. *C. W. Durbrow, G. D. Squires, J. G. Wilson, and H. H. Brown* for defendants. October 7, 1913. Complaints dismissed.

5553 (U. R. No. A-267). *BUTLER PAPER COMPANY v. NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL.* Unlawful rate on news print paper from Felts Mills, N. Y., to Richmond, Mich. *R. W. Campbell* for complainant. *D. P. Connell* and *S. L. Strauss* for defendants. October 10, 1913. Reparation awarded for \$3.68.

5456 (U. R. No. A-268). *MILLS v. BUFFALO & SUSQUEHANNA RAILWAY COMPANY ET AL.* Unreasonable rate on potatoes from Sardinia, N. Y., to New York, N. Y. *R. F. Penton* for complainant. *Guy Wellman* for defendants. October 10, 1913. Reparation awarded for \$40.74.

5610 (U. R. No. A-269). *WATERMAN LUMBER & SUPPLY COMPANY v. TEXAS & GULF RAILWAY COMPANY ET AL.* Unreasonable  
28 I. C. C.

rate on coal from Huntington and Bonanza, Ark., to Waterman, Tex. October 10, 1913. Reparation awarded for \$112.19.

5517 (U. R. No. A-270). *KIRKPATRICK v. SOUTHERN KANSAS RAILWAY COMPANY OF TEXAS ET AL.* Rate on cedar posts from Brampton, Mich., to Canadian, Tex., not found unreasonable. *G. M. Stephen* for complainant. *D. L. Meyers* and *R. H. Widdicombe* for defendants. October 10, 1913. Complaint dismissed.

5351 (U. R. No. A-271). *WHITE OAK COAL COMPANY v. CHESAPEAKE & OHIO RAILWAY COMPANY.* Unreasonable minimum weight on coal shipped from points in West Virginia to Newport News, Va. *C. W. Dillon* for complainant. *W. S. Bronson* for defendant. October 7, 1913. Reparation awarded for \$47.65.

5614 (U. R. No. A-272). *ERICKSON COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.* Rate on windmills from Batavia, Ill., to Vancouver, B. C., not found unreasonable. *J. L. Sweeney* for complainant. *R. H. Widdicombe* and *A. H. Losow* for defendants. October 10, 1913. Complaint dismissed.

5703 (U. R. No. A-273). *MATTHIESSEN & HEGELER ZINC COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.* Rate on anthracite screenings from Sheboygan, Wis., to La Salle, Ill., not found unreasonable. *J. B. McCaffrey* for complainant. *R. H. Widdicombe* for defendants. October 10, 1913. Complaint dismissed.

4953 (U. R. No. A-274). *BAUM IRON COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.* Rate on bar iron from Kansas City, Mo., to Omaha, Nebr., not found unreasonable. *C. E. Childs* for complainant. *R. B. Scott* for defendant. Complaint dismissed.

5632 (U. R. No. A-275). *LAGOMARCINO-GRUPE COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.* Rates on sweet potatoes from Foley, Ala., to Burlington, Iowa, not found unreasonable. *A. C. Slaughter* for complainant. *W. B. Eaton* for defendants. October 10, 1913. Complaint dismissed.

3691 (U. R. No. A-276). *G. W. SHELDON & COMPANY v. NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY ET AL.* Unreasonable rates on mixed merchandise from Chicago, Ill., to New York, N. Y. *H. W. Rudd* for complainant. *E. H. Boles* and *S. C. Pratt* for defendants. October 10, 1913. Reparation awarded for \$1,056.27.

5680 (U. R. No. A-277). *ARCHER DANIELS LINSEED COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.* Unreasonable rates on linseed oil from Minneapolis, Minn., to Paris, Tex. *M. W. Kaveney* for complainant. *F. H. Wood* for defendants. October 10, 1913. Reparation awarded for (total) \$173.65.

5203 (U. R. No. A-278). **HUISKAMP BROTHERS COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY.** Charges for storage of metal sign at Newmans Grove, Nebr., not found unreasonable. No appearance for complainant. *C. C. Wright* and *R. H. Widdicombe* for defendant. October 7, 1913. Complaint dismissed.

5684 (U. R. No. A-279). **HALL LUMBER & TIE COMPANY v. CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.** Unreasonable rates on lumber from Lester, W. Va., to Portsmouth, Ohio. *A. B. Hayes* for complainant. *W. S. Bronson* and *M. P. Callaway* for defendants. October 10, 1913. Reparation awarded for \$28.80.

5663 (U. R. No. A-280). **KUNZ GRAIN COMPANY v. MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY ET AL.** Unreasonable rate on corn from Hanna, Iowa, to Wausau, Wis. *D. N. Lewis* for complainant. *W. H. Bremner* and *O. W. Dynes* for defendants. October 10, 1913. Reparation awarded for \$36.74.

5723 (U. R. No. A-281). **KOOH BUTCHERS SUPPLY COMPANY v. CHICAGO & ALTON RAILROAD COMPANY.** Unreasonable rate on wooden bungs from Chicago, Ill., to Kansas City, Mo. *O. M. Rogers* for complainant. No appearance for defendant. October 13, 1913. Reparation awarded for \$5.40.

3774 (U. R. No. A-282). **HOUSTON PACKING COMPANY v. TEXAS & NEW ORLEANS RAILROAD COMPANY ET AL.** Unreasonable rates on packing-house products and fresh meats from Houston, Tex., to Lake Charles, La. *Hutcheson & Hutcheson* for complainant. *J. P. Blair, Baker, Botts, Parker & Garwood, J. G. Wilson, F. G. Wright,* and *R. C. Fullbright* for defendants. October 10, 1913. Reparation to be awarded upon furnishing proper proof.

4868 (U. R. No. A-283). **BARNES GROCER COMPANY v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.** Unreasonable rate on canned goods from Baltimore, Md., to Poplar Bluff, Mo. *G. M. Stephen* for complainant. *F. G. Wright, F. W. Gwathmey,* and *W. A. Northcutt* for defendants. October 7, 1913. Reparation awarded for \$7.37.

5714 (U. R. No. A-284). **SWIFT BEEF COMPANY (LTD.) v. CANADIAN PACIFIC RAILWAY COMPANY ET AL.** Unreasonable rates on cattle from West Toronto, Ontario, to Philadelphia, Pa. *Henry Veeder* and *Maurice Weigle* for complainant. *Gerrard Winston, W. I. Chudleigh, F. L. Ballard* for defendants. October 10, 1913. Reparation to be awarded upon furnishing proper proof.

5385 (U. R. No. A-285). **AMERICAN NAVAL STORES COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.** Unreasonable rates on rosin from Pensacola, Fla., to Cincinnati, Ohio. *Brantley, Jones & Brantley* for complainant. *N. W. Proctor* and *William Burger* for defendant. October 10, 1913. Reparation awarded for \$186.46.

5483 (U. R. No. A-286). *AMERICAN HAY COMPANY v. BOSTON & MAINE RAILROAD ET AL.* Demurrage and track-storage charges on hay at New York, N. Y., not found unlawful. *G. W. Jackson* for complainant. *H. J. Hart* for defendants. October 10, 1913. Complaint dismissed.

5038 (U. R. No. A-287). *WAGNER & SONS v. SUGARLAND RAILWAY COMPANY ET AL.* Unreasonable rates on potatoes from Burnside, Tex., to New York, N. Y. *E. F. Myers* for complainants, *F. G. Wright* for defendants. October 7, 1913. Reparation awarded for \$12.40.

5118 (U. R. No. A-288). *BUSHNELL v. MISSOURI & NORTH ARKANSAS RAILROAD COMPANY ET AL.* Unreasonable rates on lumber from Andrews, Ark., to Flat River, Mo. *A. Bushnell* for complainant in person. *E. H. Calef* for defendants. October 7, 1913. Reparation awarded for \$14.55.

5746 (U. R. No. A-289). *ATLAS BREWING COMPANY v. PENNSYLVANIA COMPANY.* Unreasonable rate on returned empty beer carriers from Indiana Harbor, Ind., to Chicago, Ill. *O. M. Rogers* for complainant. *James Stillwell* for defendant. October 13, 1913. Reparation awarded for \$21.

4660 (U. R. No. A-290). *LAMAR MILL & ELEVATOR COMPANY ET AL. v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Relying on *Kindel case*, 15 I. C. C., 555, reparation sought on shipments of various commodities from eastern points to points in Colorado. *G. M. Stephen* for complainants. *D. L. Meyers, O. W. Dynes, C. C. Wright, A. H. Lossow, W. F. Dickinson, W. T. Hughes, R. B. Scott, F. G. Wright, James Stillwell, M. P. Callaway, and A. P. Humburg* for defendants. October 7, 1913. Complaint dismissed.

4980 (U. R. No. A-291). *PACIFIC CREAMERY COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Unreasonable rate on coal from Gallup, N. Mex., to Gilbert, Ariz. *R. Johnston* for complainant. *W. P. Geary, F. A. Jones, Robert Dunlap, J. L. Coleman, C. W. Durbrow, E. S. Ives, H. A. Scandrett, and J. G. Wilson* for defendants. October 7, 1913. Reparation awarded for \$49.30.

4273 (U. R. No. A-292). *GOLDFIELD CONSOLIDATED MINES COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.* Rates on bar iron and steel from San Francisco, Cal., to Goldfield, Nev., not found unreasonable. *W. P. Seeds* for complainant. *C. W. Durbrow and H. H. Brown* for defendants. October 7, 1913. Complaint dismissed.

5077 (U. R. No. A-293). *KEMMERER HARDWARE & FURNITURE COMPANY v. UNION PACIFIC RAILROAD COMPANY ET AL.* Class rates on various articles from Chicago, Ill., and from Mississippi River and Missouri River points to Kemmerer, Wyo., not found unreasonable. *R. L. Varney* for complainant. *N. H. Loomis, P. L. Williams, H. A.*



*Scandrett, J. G. Wilson, and L. T. Wilcox* for defendants. October 7, 1913. Complaint dismissed.

5449 (U. R. No. A-294). *DODDS LUMBER COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.* Unreasonable rate on oak fence posts from Edgemont, Ark., to Hamburg, Iowa. *E. J. McVann* for complainant. *R. B. Scott* and *F. G. Wright* for defendants. October 10, 1913. Reparation awarded for \$15.

5365 (U. R. No. A-295). *SMURTHWAITE GRAIN & MILLING COMPANY v. OREGON SHORT LINE RAILROAD COMPANY ET AL.* Rates on wheat from points in Utah and Idaho to Galveston, Tex., not found unreasonable. *B. E. Bishop* for complainant. *H. A. Scandrett, P. L. Williams, N. H. Loomis, J. V. Lyle, T. J. Norton, J. G. Wilson, Baker, Botts, Parker & Garwood, L. T. Wilcox, E. E. Whitted, A. S. Brooks,* and *N. H. Lassiter* for defendants. October 7, 1913. Complaint dismissed.

5742 (U. R. No. A-296). *SMITH SYSTEM HEATING COMPANY v. GREAT NORTHERN RAILWAY COMPANY ET AL.* Charges assessed on heating furnaces and parts found to be in accordance with tariff and two-for-one rule not found unreasonable. *H. Mueller* and *J. F. Dougherty* for complainant. *R. B. Scott* and *R. O. Fyfe* for defendants. October 13, 1913. Complaint dismissed.

5301 (U. R. No. A-297). *STEWART v. MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.* Rates on apples from McClellands, Colo., to Muskogee and McAlester, Okla., not found unreasonable. *H. S. Struble* for complainant. *J. W. Allen* and *A. S. Brooks* for defendants. October 7, 1913. Complaint dismissed.

5299 (U. R. No. A-298). *WOLF & SONS v. CENTRAL RAILROAD COMPANY OF NEW JERSEY ET AL.* Unreasonable rate on ramie waste from Somerville, N. J., to Revere, Mass. *Otto Bachman* for complainants. *C. H. Blatchford* for defendants. October 7, 1913. Reparation to be awarded upon furnishing proper proof.

5743 (U. R. No. A-299). *HOLVERSCHEID & COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.* Increase in rate on coal from Valley, Pa., to Bedford, Ind., justified. *Henry Holverscheid* for complainant. *W. A. Parker* for defendants. October 13, 1913. Complaint dismissed.

4805 (U. R. No. A-300). *EDWARD TAYLOR ET AL. v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.* Rates on a mixed carload of agricultural implements, wagons, lumber, glazed sash, and roofing paper from Chicago, Ill., to Stanford, Mont., not in excess of tariff rates. *E. B. Taylor* for complainants. *R. B. Scott* for defendants. October 7, 1913. Complaint dismissed.

5473 (U. R. No. A-301). *HEDDEN-CLARK LUMBER COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.* Misrouting of lum-  
28 L. C. C.

ber from Alexander, W. Va., to Rochester, N. Y., was not made by originating carrier. *J. R. Walker* for complainant. *A. S. Bowie* for defendants. October 10, 1913. Complaint dismissed.

5204 (U. R. No. A-302). *HETTLER LUMBER COMPANY v. MISSISSIPPI CENTRAL RAILROAD COMPANY ET AL.* Rate on pine lumber from Clyde, Miss., to Staunton, Va., not found unreasonable. *W. J. Vollmer* for complainant. *F. W. Gwathmey* for defendants. October 13, 1913. A refund of \$1.99 ordered.

5417 (U. R. No. A-303). *McGILLAN ET AL. v. SOUTHERN PACIFIC COMPANY.* Rate on poles and pilings from points in Oregon to points in California not found unreasonable. *J. O. Bracken* for complainants. *C. W. Durbrow* for defendant. October 10, 1913. Complaint dismissed.

5145 (U. R. No. A-304). *ARKANSAS FRUIT COMPANY ET AL. v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.* Rate on bananas from New Orleans, La., to Mobile, Ala., not found unreasonable. *C. D. Mowen and Hile, Brizzolara & Fitzhugh* for complainants. *R. W. Moore, F. W. Gwathmey, M. C. Hall, H. G. Herbel, F. G. Wright, and J. G. Schaich* for defendants. October 7, 1913. Complaint dismissed.

5770 (U. R. No. A-305). *MONARCH METAL MANUFACTURING COMPANY v. KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.* Unreasonable rate on steel window frames with sash attached from Kansas City, Mo., to El Paso, Tex. *O. M. Rogers* for complainant. *R. R. Mitchell and J. G. Wilson* for defendants. October 13, 1913. Reparation awarded for \$134.36.

5259 (U. R. No. A-306). *PATENT VULCANITE ROOFING COMPANY v. CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.* Unreasonable rates on roofing felt, with roofing cement and nails, from Franklin, Ohio, to Bogalusa, La. *J. T. Slatter* for complainant. *F. W. Gwathmey* for defendants. October 7, 1913. Reparation awarded for \$59.01.

5379 (U. R. No. A-307). *BRADFORD-KENNEDY LUMBER COMPANY v. TEXAS & NEW ORLEANS RAILROAD COMPANY ET AL.* Unreasonable rate on lumber from Olive, Tex., to Lewellen, Nebr. *E. J. McVann* for complainant. *H. A. Scandrett* for defendants. October 7, 1913. Reparation awarded for \$145.68.

5573 and 5573 (Sub-No. 1) (U. R. No. A-308). *JETTER BREWING COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY. SAME v. CHICAGO & NORTH WESTERN RAILWAY COMPANY.* Unreasonable rates on wooden bungs from St. Louis, Mo., Milwaukee, Wis., and Cincinnati, Ohio, to South Omaha, Nebr. *G. M. Stephen* for complainant. *R. B. Scott* for defendants. October 10, 1913. Reparation awarded for (total) \$15.46.

5546 (U. R. No. A-309). *MILLER & COMPANY v. PERE MARQUETTE RAILROAD COMPANY ET AL.* Unlawful charges on potatoes from Mears, Mich., to Harvey, Ill. *J. E. Robinson* for complainants. *F. A. Butterworth* for defendants. October 10, 1913. Reparation awarded for \$8.50.

5664 (U. R. No. A-310). *UNITED STATES GYPSUM COMPANY v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.* Unreasonable rate on cement plaster from Eldorado, Okla., to Alice, Tex. *E. V. Wilson* for complainant. *F. H. Wood* and *J. C. La Coste* for defendants. October 10, 1913. Reparation awarded for \$160.

4729 (U. R. No. A-311). *RAILROAD COMMISSION OF LOUISIANA v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.* Rates assailed on vegetables from points in Louisiana to points in Texas were reduced and complaint satisfied. *W. M. Barrow* for complainant. *H. J. Fernandez* for Alexander Traffic Bureau. *F. R. Dalzell*, *Robert Dunlap*, *J. L. Coleman*, *E. L. Sargent*, and *C. W. Owen* for defendants. October 7, 1913. Complaint dismissed.

5177 (U. R. No. A-312). *HINTON FRUIT & PRODUCE COMPANY v. CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.* Alleged unreasonable rates on pears from points in Delaware to Hinton, W. Va. Adjustment of rates agreed upon. *R. F. Dunlap* for complainant. *W. S. Bronson* and *F. L. Ballard* for defendants. October 7, 1913. Complaint dismissed.

5845 (U. R. No. A-313). *NATIONAL LEAGUE OF COMMISSION MERCHANTS OF THE UNITED STATES v. PENNSYLVANIA RAILROAD COMPANY.* Excessive drayage charges on peaches and cantaloupes from Jersey City, N. J., to New York City. *R. S. French* for complainant. *H. W. Bikle* for defendant. November 4, 1913. Reparation to be awarded upon furnishing of proper proof.

5437 and 5437 (Sub-No. 1) (U. R. No. A-314). *UNITED STATES CAST IRON PIPE & FOUNDRY COMPANY v. NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL.* SAME *v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL.* Rates on cast-iron pipe and fittings from southern points to points in Illinois. *W. M. Wood* for complainant. *R. W. Moore* for defendants. October 10, 1913. Complaints dismissed.

4454 (U. R. No. A-315). *KRAUSS BROTHERS LUMBER COMPANY v. NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL.* Rates on lumber from points in Florida, Mississippi, Louisiana and Arkansas to Whiteville and Somerville, Tenn., not found unreasonable. *A. B. Hayes* for complainant. *M. P. Callaway* and *M. C. Hall* for defendants. October 7, 1913. Complaint dismissed.

5468 (U. R. No. A-316). *WEST COMPANY v. ERIE RAILROAD COMPANY ET AL.* Rates on iron or steel vault or office furniture from Jamestown, N. Y., to San Francisco and Los Angeles, Cal., not found

unreasonable. *J. O. Bracken* for complainant. *E. W. Camp, A. S. Halsted, J. G. Wilson, and C. W. Durbrow* for defendants. October 10, 1913. Complaint dismissed.

5414 (U. R. No. A-317). *WEST COMPANY v. INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY ET AL.* Rate on yellow-pine lumber from Lovelady, Tex., to Henryetta, Okla., not found unreasonable. *J. M. Simmons* for complainant. *H. G. Herbel and F. G. Wright* for defendants. October 10, 1913. Complaint dismissed.

5687 (U. R. No. A-318). *SMITH MANUFACTURING COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.* Unreasonable rates on manure spreaders from De Kalb, Ill., to Woodville, Wis., Sacred Heart and Bird Island, Minn., but complainant not shown to be damaged. *G. M. Stephen* for complainant. No appearance for defendants. October 10, 1913. Complaint dismissed.

5557 (U. R. No. A-319). *KITTOE BOILER & TANK COMPANY v. ERIE RAILROAD COMPANY ET AL.* Rates on riveted steel pipe with angle bars and plates from Canton, Ohio, to Jersey City, N. J., found lawful. *G. M. Stephen* for complainant. *W. A. Parker and R. F. Donison* for defendants. October 13, 1913. Complaint dismissed.

5717 (U. R. No. A-320). *STEARNS & CULVER LUMBER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.* Unreasonable rate on locomotive cab from Schenectady, N. Y., to Milton, Fla. *G. M. Stephen* for complainant. *William Burger* for defendants. October 13, 1913. Reparation awarded for \$48.40.

5589 (U. R. No. A-321). *UNITED KANSAS PORTLAND CEMENT COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.* Unreasonable charges due to misrouting cement shipped from Independence, Kans., to Ravenna, Nebr. *W. J. Sterling* for complainant. *C. C. P. Rausch and C. E. Spens* for defendants. October 10, 1913. Reparation awarded for \$7.12.

5634 (U. R. No. A-322). *GAMBLE ROBINSON FRUIT COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.* Unreasonable charges due to misrouting apples shipped from Barnard, Mo., to Aberdeen, S. Dak. *L. A. Knudsen* for complainant. *G. P. Lyman and J. N. Davis* for defendants. October 13, 1913. Reparation awarded for \$24.44.

5810 (U. R. No. A-323). *SWEDISH IRON & STEEL CORPORATION v. BUSH TERMINAL COMPANY ET AL.* Charges collected on sheeting from Bush Terminal, Brooklyn, N. Y., to Boston, Mass., not found unlawful. *B. Fertwin* for complainant. *S. S. Perry and Bruce Wyman* for defendants. October 13, 1913. Complaint dismissed.

5620 (U. R. No. A-324). *CLEMONS PRODUCE COMPANY v. CHICAGO & ALTON RAILROAD COMPANY ET AL.* Unreasonable rate on apples from Higginsville, Mo., to Memphis, Tenn. *H. G. Wilson* for com-

plainant. *Winston, Payne, Strawn & Shaw* and *W. P. Pinkerton* for defendants. October 13, 1913. Reparation awarded for \$29.98.

5264 (U. R. No. A-325). *STEINHARDT & COMPANY v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.* Rate on cottonseed cake from Cushing, Okla., to Westwego, La., not found unreasonable. *A. B. Hayes* for complainants. *F. G. Wright* and *D. L. Meyers* for defendants. October 7, 1913. Complaint dismissed.

5073 and 5073 (Sub-No. 1) (U. R. No. A-326). *LINDSAY BROTHERS v. GRAND RAPIDS & INDIANA RAILWAY COMPANY ET AL.* SAME *v. SAME.* Unreasonable rates on boilers from Kalamazoo, Mich., to points in Wisconsin. *H. F. Lindsay* for complainant. *J. N. Davis, A. P. Humburg, F. A. Pixley,* and *R. H. Widdicombe* for defendants. October 7, 1913. Reparation to be awarded upon furnishing proper proof.

4904, 4904 (Sub-No. 6), 4904 (Sub-Nos. 1 to 5) (U. R. No. A-327). *BOYLE COMMISSION COMPANY v. WESTERN PACIFIC RAILWAY COMPANY.* SAME *v. OREGON SHORT LINE RAILROAD COMPANY ET AL.* Rates on burlap bags from California points to Colorado and Idaho points and from Colorado points to Idaho Falls, Idaho, found unreasonable in fact, but complainant not shown to be damaged. *A. E. Helm,* for complainant. *E. N. Clark, J. G. McMurry, Warren Olney, jr., C. W. Durbrow, N. H. Loomis, P. L. Williams, H. A. Scandrett,* and *J. G. Wilson* for defendants. October 13, 1913. Reparation denied.

5657 (U. R. No. A-328). *GLAVIN v. AMERICAN EXPRESS COMPANY.* Unlawful rate on live poultry from Ransomville, N. Y., to Milwaukee, Wis. *G. A. Schroeder* for complainant. *R. H. Widdicombe* for defendant. November 4, 1913. Reparation awarded for \$2.08.

5502 (U. R. No. A-329). *HOLLAND v. UTAH RAILWAY COMPANY ET AL.* Unreasonable rate on fossil rock from Dragon, Utah, to Pittsburgh, Pa. *W. J. Holland* for complainant in person. *P. B. Steffen, F. G. Wright,* and *A. P. Burgwin* for defendants. November 3, 1913. Reparation awarded for \$1,145.08.

4687 (U. R. No. A-330). *SCOTT-MAYER COMMISSION COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Allegation that carload of celery shipped from Pueblo, Colo., to Little Rock, Ark., was misrouted not sustained. *M. P. Cohen* for complainant. *J. E. Johanson* for defendants. October 7, 1913. Complaint dismissed.

5766 (U. R. No. A-331). *MILNE & HECTOR v. NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.* Unreasonable charges on building granite from Quincy Adams, Mass., to Woodlawn, N. Y. *Andrew Milne, jr.,* for complainant. *S. S. Perry, C. H. Blatchford,*  
281 C. C.

and *Bruce Wyman* for defendant. October 13, 1913. Reparation awarded for \$44.72.

5378 (U. R. No. A-332). *PETERS MILL COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.* Shipment of alfalfa feed from Omaha, Nebr., to Sullivan, Mo., was not misrouted. *J. A. Kuhn* for complainant. *F. C. Dumbek* and *R. B. Scott* for defendants. October 7, 1913. Complaint dismissed.

5356 (U. R. No. A-333). *LOUISVILLE CEMENT COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.* Reparation awarded in part and denied in part on shipments of coal from North Jellico and Wilton, Ky., to Speeds, Ind. *Hines & Norman* for complainant. *J. M. Dewberry* for defendants. October 7, 1913. Award of reparation to be made upon furnishing of proof.

5372 (U. R. No. A-334). *BAUM COAL COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.* Misrouting shipments of coal from Itasca, Wis., to Omaha, Nebr. *A. E. Bruce* for complainant. *A. F. Cleveland* for defendants. October 7, 1913. Reparation awarded for \$57.16.

5312 (U. R. No. A-335). *CLAPP & COMPANY v. AMERICAN EXPRESS COMPANY.* Unreasonable rates on horses from Waterloo, Iowa, to Lowell, Mass. *E. J. Noyes* for complainant. *E. E. Bush* for defendant. October 7, 1913. Reparation awarded for \$25.

5606 (U. R. No. A-336). *DULUTH IRON & METAL COMPANY v. NORTHERN PACIFIC RAILWAY COMPANY ET AL.* Unlawful charges on scrap iron from Duluth, Minn., to Brackenridge, Pa. *W. G. Bonham* and *David Davis* for complainant. *H. E. Still* for defendants. November 4, 1913. Reparation awarded for \$1,273.86.

5178 and 5178 (Sub-No. 1) (U. R. No. A-337). *COLORADO PORTLAND CEMENT COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL. UNITED STATES PORTLAND CEMENT COMPANY v. SAME.* Increased rates on cement from Portland and Concrete, Colo., to stations in Nebraska and Wyoming found unreasonable. *Benedict & Phelps* for complainants. *E. N. Clark* and *R. B. Scott* for defendants. October 7, 1913. Reparation to be awarded upon furnishing proper proof.

5818 (U. R. No. A-338). *STEINHARDT & COMPANY v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.* Unreasonable rate on cottonseed oil, for export, from Deport, Tex., to New Orleans, La. *A. B. Hayes* for complainants. *F. G. Wright* for defendants. October 13, 1913. Reparation awarded for \$54.27.

5618 (U. R. No. A-339). *GAMBLE-ROBINSON COMMISSION COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.* Misrouting apples shipped from Salem, Nebr., to Red Wing, Minn.

*L. A. Knudsen* for complainant. *G. P. Lyman* and *J. N. Davis* for defendants. November 4, 1913. Reparation awarded for \$21.96.

5559 (U. R. No. A-340). *HULL COMPANY v. ELGIN, JOLIET & EASTERN RAILWAY COMPANY ET AL.* Unreasonable rate on coal from Waukegan, Ill., to Prosser, Nebr. *E. J. McVann* for complainant. *R. B. Scott* and *F. G. Wright* for defendants. October 10, 1913. Reparation awarded for \$17.04.

5707 (U. R. No. A-341). *STEWART v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.* Unreasonable rates on millet seed, cane seed, and maize from Conway, Tex., to Colorado Springs, Colo. *J. L. Stewart* for complainant in person. *E. E. Whitted* and *A. S. Brooks* for defendants. October 10, 1913. Reparation awarded for \$171.46.

5794 (U. R. No. A-342). *McCAULL-DINSMORE COMPANY v. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY ET AL.* Increased rate on shelled corn from Wynot and Concord, Nebr., to Fort Collins, Colo., not justified. *S. J. McCaull* for complainant. *W. D. Burr* and *E. W. Chapman* for defendants. October 13, 1913. Reparation awarded for \$93.40.

5121 (U. R. No. A-343). *BRACKNEY ET AL. v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.* Unreasonable rate on stock cattle from South Omaha, Nebr., to Brookston, Ind. *Palmer & Carr* for complainants. *R. H. Widdicombe* and *O. C. Carty* for defendants. October 7, 1913. Reparation awarded for (total) \$296.54.

5533 (U. R. No. A-344). *NAPOLEON HILL COTTON COMPANY v. MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.* Defendant's tariff on compressed and uncompressed cotton not ambiguous and rates thereon from Pryor, Okla., to St. Louis, Mo., not found unjustly discriminatory. *T. E. Upshaw* for complainant. *C. S. Burg* for defendant. October 10, 1913. Complaint dismissed.

5631 (U. R. No. A-345). *GAMBLE-ROBINSON COMMISSION COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.* Benefit of reconsignment privilege on apples from Hannibal, N. Y., to Owatonna, Minn., can not be applied retroactively. *L. A. Knudsen* for complainant. *J. N. Davis* for defendants. November 4, 1913. Complaint dismissed.

4791 (U. R. No. A-346). *CONTINENTAL PAPER BAG COMPANY v. GREENWICH & JOHNSONVILLE RAILWAY COMPANY ET AL.* Unreasonable rate on tissue wrapping paper from Greenwich, N. Y., to Atlanta, Ga. *J. R. Rogers* for complainant. *P. O. Wadsworth* and *C. J. Rixey, jr.*, for defendants. November 3, 1913. Reparation awarded for \$58.23.

5552 (U. R. No. A-347). *CURLL v. CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.* Unlawful charges on lumber from Marlinton, W.

Va., to Hughesville, Pa. *Daniel B. Currell* for complainant in person. *E. P. Bates*, *W. S. Bronson*, and *W. S. Kinter* for defendants. November 3, 1913. Reparation awarded for \$71.79.

5694 (U. R. No. A-348). *STERLING PICKLING WORKS v. WABASH RAILROAD COMPANY ET AL.* Unreasonable rate on pickles from Hardin, Mo., to St. Joseph, Mo. *Edward Holland* for complainant. *H. M. McReynolds* for defendants. November 4, 1913. Reparation awarded for \$36.

5467 (U. R. No. A-349). *CAVERS ELEVATOR COMPANY ET AL. v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.* Unreasonable switching charges on grain at Council Bluffs, Iowa. *E. P. Smith* for complainant. *F. G. Wright* and *A. P. Humburg* for defendants. October 10, 1913. Reparation to be awarded upon furnishing proper proof.

5548 (U. R. No. A-350). *MAINE SPINNING COMPANY v. BOSTON & MAINE RAILROAD ET AL.* Unreasonable charges on wool tops from Wilton, N. H., to Skowhegan, Me. *N. B. K. Brooks* for complainant. *Bruce Wyman*, *S. S. Perry*, and *C. H. Blatchford* for defendants. October 10, 1913. Reparation awarded for \$22.10.

5786 (U. R. No. A-351). *HOMER LUMBER COMPANY v. SEABOARD AIR LINE RAILWAY ET AL.* Rate on lumber from Branchville, Va., to Washington, D. C., not found unreasonable. *J. R. Walker* for complainant. *M. P. Callaway* for defendants. October 13, 1913. Complaint dismissed.

5288 (U. R. No. A-352). *LAGOMARCINO-GRUPE COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.* Refrigeration charges on strawberries, cantaloupes, and peaches from Van Buren, Ark., to Iowa points not found unreasonable. *A. C. Slaughter* for complainant. *F. G. Wright*, *W. D. Eaton*, and *G. H. Crosby* for defendants. November 3, 1913. Complaint dismissed.

5712 (U. R. No. A-353). *KANSAS PORTLAND CEMENT COMPANY v. MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.* Misrouting cement shipped from Gas, Kans., to California points. *G. M. Stephen* for complainant. *L. T. Wilcox* for defendants. October 10, 1913. Reparation awarded for \$368.

4240 (U. R. No. A-354). *DU PRE COMPANY ET AL. v. BUFFALO, ROCHESTER & PITTSBURGH RAILWAY COMPANY ET AL.* Unjust discrimination in rates on fruits and vegetables from points in New York to Columbia, S. C. No appearances. November 10, 1913. Reparation awarded for \$4,276.20.

5112 (U. R. No. A-355). *RAMSEY & COMPANY ET AL. v. RIO GRANDE & EL PASO RAILROAD COMPANY ET AL.* Rates on beer from Milwaukee, Wis., and St. Louis, Mo., to El Paso, Tex., not found unreasonable. *R. B. Daniel* for complainants. *T. J. Norton*, *A. A. Hurd*, *W. F. Dickinson*, *W. T. Hughes*, *Hawkins & Franklin*, *H. G. Herbel*,



*F. G. Wright*, and *J. B. Payne* for defendants. November 3, 1913. Complaint dismissed.

4982 (U. R. No. A-356). *PACIFIC CREAMERY COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.* Rate on tin cans from Los Angeles, Cal., to Creamery, Ariz., not found unreasonable. *Roland Johnson* for complainant. *J. G. Wilson*, *H. C. Booth*, and *C. W. Durbrow* for defendants. November 3, 1913. Complaint dismissed.

5768 (U. R. No. A-357). *SALT LAKE GLASS & PAINT COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.* Rate on wall finish from Chicago, Ill., to Salt Lake City, Utah, not found unreasonable. *O. M. Rogers* for complainant. *N. H. Loomis*, *P. L. Williams*, *H. A. Scandrett*, and *L. T. Wilcox* for defendants. October 13, 1913. Complaint dismissed.

5779 (U. R. No. A-358). *REES & WAGNER v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.* Rate on iron pipe from Birmingham, Ala., to Collinsville, Okla., not found unreasonable. October 13, 1913. Complaint dismissed.

5522 (U. R. No. A-359). *McKENZIE v. CENTRAL VERMONT RAILWAY COMPANY ET AL.* Rate on dressed granite from Barre, Vt., to Salt Lake City, Utah, not found unreasonable. *B. E. Bishop* for complainant. *G. H. Smith* for defendants. November 3, 1913. Complaint dismissed.

5731 (U. R. No. A-360). *SCULLY SYRUP COMPANY v. PENNSYLVANIA RAILROAD COMPANY ET AL.* Rates on refiner's sirup from New York, N. Y., Harsimus Cove, N. J., and Philadelphia, Pa., to Chicago, Ill., not found unreasonable. *F. H. Curran* for complainant. *F. L. Ballard*, *R. L. Russell*, *T. H. Burgess*, and *W. S. Kallman* for defendants. October 13, 1913. Complaint dismissed.

5665 (U. R. No. A-361). *LOEWENBERG & GOING COMPANY v. OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY ET AL.* Charges on cast-iron stove reservoirs from Jeffersonville, Ind., to Portland, Oreg., not found unreasonable. *E. M. Cousin* for complainant. *A. C. Spencer* for defendants. November 4, 1913. Complaint dismissed.

5803 (U. R. No. A-362). *TEMPLETON & SONS v. CHICAGO, INDIANA & SOUTHERN RAILROAD COMPANY ET AL.* Charges on grain from Chicago, Ill., to Louisville, Ky., and on grain products from Louisville to points in Virginia not found unreasonable. *W. M. Hopkins* for complainant. *J. S. Patterson* and *W. S. Bronson* for defendants. November 4, 1913. Complaint dismissed.

5955 (U. R. No. A-363). *GUND BREWING COMPANY ET AL. v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.* Unreasonable rates on beer from La Crosse, Wis., to Tyndall, S. Dak. *H. A. Walter* and *R. D. Chamberlin* for complainants. No appearance for  
28 I. C. C.

defendant. November 4, 1913. Reparation to be awarded upon furnishing proper proof.

5568 (U. R. No. A-364). *HETTLER LUMBER COMPANY v. GULF & SHIP ISLAND RAILROAD COMPANY ET AL.* Misrouting not shown in shipment of lumber from Collins, Miss., to Steubenville, Ohio. *W. J. Vollmer* for complainant. *F. W. Gwathmey* for defendants. November 3, 1913. Complaint dismissed.

5767 (U. R. No. A-365). *WILLIAMS v. WESTERN MARYLAND RAILWAY COMPANY ET AL.* Unreasonable rate on trolley ties from Purshall, W. Va., to Cuyahoga Falls, Ohio. *J. E. Williams* for complainant in person. No appearance for defendants. November 4, 1913. Reparation awarded upon furnishing of proper proof.

5801 (U. R. No. A-366). *TUNIS-COCKEY LUMBER COMPANY v. ATLANTIC COAST LINE RAILROAD COMPANY ET AL.* Allegation of failure to reconsign lumber shipped from Bowden, N. C., to Cape Charles, Va., not sustained. *R. W. Tunis* for complainant. *C. J. Rixey, jr.*, for defendants. November 4, 1913. Complaint dismissed.

5224 (U. R. No. A-367). *FULLERTON-POWELL HARDWOOD LUMBER COMPANY v. MOREHEAD & NORTH FORK RAILROAD COMPANY ET AL.* Misrouting switch ties shipped from Clearfield, Ky., to Cadillac, Mich. *H. J. Aldworth* for complainant. *J. A. Scheuerman* for defendants. October 7, 1913. Reparation awarded for \$33.26.

5555 (U. R. No. A-368). *METROPOLIS BENDING COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.* Charges on sawmill machinery from Canton, Ohio, to Kelly, La., not found unreasonable. *P. M. Seymour* for complainant. *Austin Lynch* for defendants. November 3, 1913. Complaint dismissed.

5793 (U. R. No. A-369). *CONTINENTAL PAPER BAG COMPANY v. CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.* Reparation sought upon basis of *Newport News case* not sustained. *J. T. Rogers* for complainant. *C. J. Rixey, jr.*, for defendants. November 4, 1913. Complaint dismissed.

4064 (U. R. No. A-370). *SPOKANE DRUG COMPANY v. GREAT NORTHERN RAILWAY COMPANY.* Rate on epsom salts from Oroville, Wash., to Spokane, Wash., and class and commodity rates between points on the Marcus division not found unreasonable. *S. V. Carey* for complainant. *F. V. Brown* for defendant. October 7, 1913. Complaint dismissed.

4400 (U. R. No. A-371). *SHEBOYGAN MINERAL WATER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.* Misrouting of returned empty mineral water bottles shipped from Belleville, Ill., to Sheboygan, Wis. *G. W. Witte* for complainant.

*R. H. Widdicombe* for defendants. December 1, 1913. Reparation awarded for \$3.45.

5496 (U. R. No. A-372). *BUTLER PAPER COMPANY v. BANGOR & AROOSTOOK RAILROAD COMPANY ET AL.* Rate on news print paper from Millinockett, Me., to Dixon, Ill., in excess of published tariff. *R. W. Campbell* for complainant. *W. A. Kittermaster* for defendants. December 1, 1913. Reparation awarded for \$26.71.

5993 (U. R. No. A-373). *CHURCHILL GRAIN & SEED COMPANY v. WEST SHORE RAILROAD COMPANY ET AL.* Misrouting wheat shipped from Clarence, N. Y., to Provincetown, Mass. *G. W. Bartlett* for complainant. *J. M. Sternhagen* for defendants. December 1, 1913. Reparation awarded for \$14.50.

5660 (U. R. No. A-374). *FRENCH BATTERY & CARBON COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.* Unreasonable rate on manganese ore from Elyria, Ohio, to Madison, Wis. *R. L. Smith* for complainant. *C. C. Wright* and *R. H. Widdicombe* for defendants. October 10, 1913. Reparation awarded for \$160.52.

5602 (U. R. No. A-375). *BURSON KNITTING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.* Unreasonable charges on mixed shipment of silicated wire electric signs, printed advertising matter, and merchandise envelopes from Rockford, Ill., to Tacoma, Wash. *C. S. Bather* for complainant. *O. W. Dynes* and *R. C. Fyfe* for defendant. October 10, 1913. Reparation awarded for \$42.84.

5146 (U. R. No. A-376). *SCHULLER v. NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL.* Unreasonable rate on one automobile from New York, N. Y., to San Francisco, Cal. *W. W. Brackett* for complainant. *C. W. Durbrow* for defendants. December 1, 1913. Reparation awarded for \$95.

5577 (U. R. No. A-377). *CRANSTON LUMBER COMPANY v. NORFOLK SOUTHERN RAILROAD COMPANY ET AL.* Unlawful charges on shingles from Elizabeth City, N. C., to Shelbyville, Del. *J. R. Walker* for complainant. No appearance for defendants. October 13, 1913. Reparation awarded for \$13.57.

5832 (U. R. No. A-378). *LOEW MANUFACTURING COMPANY v. NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY ET AL.* Rate on bottle-washing machine and parts from Chicago, Ill., to Boise, Idaho, not found to justify an award of reparation. *A. L. Bishop* for complainant. *L. T. Wilcox* for defendants. December 4, 1913. Complaint dismissed.

5458 (U. R. No. A-379). *GOLDFIELD CONSOLIDATED MINES COMPANY v. SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COM-*

PANY ET AL. Rate on iron mine cars from Salt Lake City, Utah, to Goldfield, Nev., not found unreasonable. *H. C. Leavitt* for complainant. *C. O. Whittemore* for defendants. December 3, 1913. Complaint dismissed.

5492 and 5592 (U. R. No. A-380). MILLER & COMPANY v. GULF, COLORADO & SANTA FE RAILWAY COMPANY ET AL. SAME v. SAME. Rates on potatoes from Lakeside, Tex., to Philadelphia, Pa., and Baltimore, Md., not found to justify an award of reparation. *J. E. Robinson* for complainant. *F. E. Andrews* and *James Stillwell* for defendants. December 1, 1913. Complaints dismissed.

5459 (U. R. No. A-381). GOLDFIELD CONSOLIDATED MINES COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL. Rate on dry litharge from St. Louis, Mo., to Goldfield, Nev., not found unreasonable. *H. C. Leavitt* and *W. C. Donnelly* for complainant. *C. O. Whittemore* for defendants. December 3, 1913. Complaint dismissed.

4931 (U. R. No. A-382). FRICK COMPANY v. CUMBERLAND VALLEY RAILROAD COMPANY ET AL. Charges on ice machine from Waynesboro, Pa., to Charleston, S. C., resulted in an undercharge. *Scott, Upson & Newcomb* and *F. J. McLaughlin* for complainant. *R. W. Moore* and *M. P. Callaway* for defendants. December 3, 1913. Complaint dismissed.

5528 (U. R. No. A-383). THORNHILL WAGON COMPANY ET AL. v. NORFOLK & WESTERN RAILWAY COMPANY ET AL. Rates on rough wagon felloes from Kimball, Tenn., to Lynchburg, Va., not found unreasonable. *G. M. Stephen* for complainants. *F. W. Gwathmey* for defendants. October 10, 1913. Complaint dismissed.

5588 (U. R. No. A-384). DOVER MANUFACTURING COMPANY v. PENNSYLVANIA COMPANY ET AL. Charges on asbestos sad irons from Canal Dover, Ohio, to Spokane, Wash., not found unreasonable. *L. O. Haug* for complainant. *A. P. Burgwin* for defendants. November 3, 1913. Complaint dismissed.

4874 and 4874 (Sub-Nos. 1 to 27) (U. R. No. A-385). HESS ET AL. v. UNION PACIFIC RAILROAD COMPANY ET AL. INMAN ET AL. v. SAME. HUNTER, CASTEEL & HUNTER COMPANY v. LARAMIE, HAHN'S PEAK & PACIFIC RAILWAY COMPANY ET AL. EASTMAN ET AL. v. UNION PACIFIC RAILROAD COMPANY ET AL. MORTON ET AL. v. SAME. MEYER & RAIFE ET AL. v. SAME. McDougall ET AL. v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL. CARROLL v. SAME. THOMPSON MERCANTILE COMPANY ET AL. v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL. PATTERSON ET AL. v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL. CARROLL ET AL. v. SAME. LARSEN ET AL. v. UNION PACIFIC RAILROAD COMPANY ET AL. WILLIAMS ET AL. v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

WHEATLAND HARDWARE COMPANY ET AL. v. SAME. KENNEY ET AL. v. SAME. JENSON ET AL. v. SARATOGA & ENCAMPMENT RAILWAY COMPANY ET AL. PARKINSON ET AL. v. SAME. BAKER ET AL. v. SAME. PLUMMER ET AL. v. SAME. DALEY ET AL. v. UNION PACIFIC RAILROAD COMPANY ET AL. Reparation awarded as to certain shipments of merchandise from Chicago, Ill., St. Louis, Mo., and points east thereof to points in Wyoming, and denied as to others. *R. L. Varney and R. M. Lamont* for complainants. *H. A. Scandrett, J. G. Wilson, L. T. Wilcox, R. H. Widdicombe, C. C. Wright, H. R. Woods, A. P. Humburg, and R. B. Scott* for defendants. October 7, 1913. Reparation to be awarded upon furnishing proper proof.

5457 (U. R. No. A-386). GOLDFIELD CONSOLIDATED MINES COMPANY v. PENNSYLVANIA COMPANY ET AL. Rate on asbestos roofing from Beaver Falls, Pa., to Goldfield, Nev., not found unreasonable. *H. C. Leavitt* for complainant. *C. O. Whittemore* for defendants. December 3, 1913. Complaint dismissed.

4593 (U. R. No. A-387). SHORTSVILLE WHEEL COMPANY v. CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL. Relief sought as to future rates on club-turned spokes from points south of the Ohio River to Shortsville, N. Y., already granted in another case. *W. C. Ellis* for complainant. *D. P. Connell, E. S. Ballard, and Clyde Brown* for defendants. December 1, 1913. Complaint dismissed.

5460 (U. R. No. A-388). SCANDINAVIAN AMERICAN TRADING COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY. Reparation sought because of failure to give advance notice of arrival of steamer at Baltimore, Md., but not allowed. *Orvar Hylin* for complainant. *A. S. Bowie* for defendant. October 10, 1913. Complaint dismissed.

5254 (U. R. No. A-389). SMITH LUMBER COMPANY v. SOUTHERN PACIFIC COMPANY ET AL. Rates on lumber from Bay Point, Cal., to Nevada points found unreasonable, but rate on timbers from Bay Point to Tonopah, Nev., not found unreasonable. *F. T. Westfall* for complainant. *G. D. Squires* for defendants. December 3, 1913. Reparation awarded for \$304.59.

2713 (U. R. No. A-390). MICHIGAN HARDWOOD MANUFACTURERS' ASSOCIATION ET AL. v. TRANSCONTINENTAL FREIGHT BUREAU ET AL. Awards of reparation granted on proofs presented in accordance with prior decisions. *W. E. McCornack* for complainants. *Robert Dunlap, J. L. Coleman, J. F. Finerty, jr., Charles Donnelly, R. B. Scott, C. W. Durbrow, A. C. Spencer, P. L. Williams, N. H. Loomis, J. P. Blair, Baker, Botts, Parker & Garwood, H. A. Scandrett, and J. G. Wilson* for defendants. January 6, 1914. Reparation awarded for (total) \$6,890.11.

5719 (U. R. No. A-391). *GISHOLT MACHINE COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY*. Unreasonable rate on sand from Elgin, Ill., to Madison, Wis. *J. H. Wheelock* for complainant. *A. F. Cleveland* for defendant. December 1, 1913. Reparation awarded for \$17.50.

5349 (U. R. No. A-392). *MOORE HARDWARE & IRON COMPANY v. DENVER & RIO GRANDE RAILROAD COMPANY ET AL.* Unreasonable rate on blacksmith coal from Conemaugh, Pa., to Denver, Colo. *G. M. Stephen* for complainant. *J. C. Jeffery, F. C. Gifford, James Stillwell, H. W. Bicklé, M. L. Clardy, H. G. Herbel, and F. G. Wright* for defendants. December 4, 1913. Reparation awarded for \$18.22.

5974 (U. R. No. A-393). *BUFFALO COLD STORAGE COMPANY v. SAN ANTONIO & ARANSAS PASS RAILWAY COMPANY ET AL.* Unreasonable rate on dressed poultry from Yoakum, Tex., to Buffalo, N. Y. *Kellogg & Baker* for complainant. *F. G. Wright* for defendants. December 1, 1913. Reparation awarded for \$90.92.

5617 (U. R. No. A-394). *NAMM v. PENNSYLVANIA RAILROAD COMPANY ET AL.* No refund permitted on lost returned portion of a round-trip ticket from New York, N. Y., to Augusta, Ga. *J. F. Lowe* for complainant. *F. L. Ballard and H. W. Bicklé* for defendants. December 1, 1913. Complaint dismissed.

5633 (U. R. No. A-395). *GAMBLE-ROBINSON COMMISSION COMPANY v. ARCADIA & BETSEY RIVER RAILWAY COMPANY ET AL.* Allegation of misrouting apples shipped from Sorenson, Mich., to Minneapolis, Minn., not sustained. *L. A. Knudsen* for complainant. *A. F. Cleveland* for defendants. December 1, 1913. Complaint dismissed.

5647 (U. R. No. A-396). *HURON MILLING COMPANY v. PERE MARQUETTE RAILROAD COMPANY*. Unreasonable charges on corn from Chicago, Ill., to Harbor Beach, Mich. *W. L. Jenks* for complainant. *Bills, Parker, Shields & Brown* for defendant. December 1, 1913. Reparation to be awarded upon furnishing proper proof.

5724 (U. R. No. A-397). *HEGER v. ADAMS EXPRESS COMPANY ET AL.* Rate on dressed poultry from St. Louis, Mo., to New York, N. Y. not found unreasonable. *O. M. Rogers* for complainant. *G. B. Winston* for defendants. December 4, 1913. Complaint dismissed.

5061 (U. R. No. A-398). *DAVIS MILLING COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY*. Unreasonable rate on pancake flour from St. Joseph, Mo., to San Francisco and Los Angeles, Cal. *R. R. Clark and H. G. Krake* for complainant. *D. L. Meyers* for defendant. December 3, 1913. Reparation awarded for \$222.56.

3418 (U. R. No. A-399). *HASTINGS COMPANY v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.* Tariffs held to be unreason-

able in that they do not provide that when a car is ordered of greater dimensions than that furnished, a smaller car may be used and charges collected at actual weight. *W. L. Duncan* for complainant. *O. M. Conley* for defendants. December 3, 1913. Reparation awarded for \$11.79.

5695 (U. R. No. A-400). *SULZBERGER & SONS COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.* Increase in rate on stock from Los Angeles, Cal., to Chicago, Ill., not justified. *Hamilton Moses* for complainant. *J. G. Wilson* and *L. T. Wilcox* for defendants. December 4, 1913. Reparation awarded for \$363.03.

NOTE.—The amount of reparation awarded in above cases aggregates \$18,851.52.

28 L. C. C.





## TABLE OF MEMORANDUM AND UNREPORTED CASES.

[Note.—Docket number in parentheses denotes memorandum opinion, and "U. R." in brackets denotes unreported reparation cases briefed at pages cited.]

	Page.
Adams Express Co., Heger v. [U. R. A-397].....	740
Althoff Mfg. Co. v. D. & R. G. R. R. Co. (4820).....	712
Amador Central R. R. Co., Booth-Kelley Lumber Co. v. (5404).....	714
American Express Co., Clapp & Co. v. [U. R. A-335].....	732
American Express Co., Glavin v. [U. R. A-328].....	731
American Hay Co. v. B. & M. R. R. [U. R. A-286].....	726
American Land, Timber & Stave Co. v. St. L. & S. F. R. R. Co. (5718).....	717
American Lumber & Mfg. Co. v. C. & O. Ry. Co. (5996).....	720
American Metal Co. (Ltd.) v. C. R. R. Co. of N. J. (5812).....	719
American Naval Stores Co. v. L. & N. R. R. Co. [U. R. A-285].....	725
American Telephone & Telegraph Co., Corporation Commission of Oklahoma v. (5953).....	720
Anderson & Saline River Ry. Co., Commercial Club of Omaha v. [U. R. A-263].....	723
Anderson-Tully Co. v. M. L. & T. R. R. & S. S. Co. (5191)....	713
Arcadia & Betsey River Ry. Co., Gamble-Robinson Commis- sion Co. v. [U. R. A-395].....	740
Arizona Corporation Commission v. A. E. R. R. Co. (5320)....	714
Arizona Eastern R. R. Co., Arizona Corporation Commission v. (5320).....	714
Arizona Railway Commission v. Wells Fargo & Co. (3667)....	711
Arkansas Fruit Co. v. St. L. & S. F. R. R. Co. [U. R. A-304]..	728
Arnett Telephone Co. v. American Telephone & Telegraph Co. (5953).....	720
Atchison, Topeka & Santa Fe Ry. Co., Davis Milling Co. v. [U. R. A-398].....	740
Atchison, Topeka & Santa Fe Ry. Co., Dewey Portland Ce- ment Co. v. (4949).....	712
Atchison, Topeka & Santa Fe Ry. Co., Lamar Mill & Elevator Co. v. [U. R. A-290].....	726
Atchison, Topeka & Santa Fe Ry. Co., Pacific Creamery Co. v. [U. R. A-291].....	726
Atchison, Topeka & Santa Fe Ry. Co., Plummer Mfg. Co. v. (5796).....	718

	Page.
Atchison, Topeka & Santa Fe Ry. Co., St. Louis Cotton Exchange <i>v.</i> (5677) .....	716
Atchison, Topeka & Santa Fe Ry. Co., Scott-Mayer Commission Co. <i>v.</i> [U. R. A-330] .....	731
Atlantic City R. R. Co., Patteson & Co. <i>v.</i> (5645) .....	716
Atlantic Coast Line R. R. Co., Tunis-Cockey Lumber Co. <i>v.</i> [U. R. A-366] .....	736
Atlas Brewing Co. <i>v.</i> P. Co. [U. R. A-289] .....	726
Bagdad Land & Lumber Co. <i>v.</i> L. & N. R. R. Co. [U. R. A-320] .....	730
Baker <i>v.</i> S. & E. Ry. Co. [U. R. A-385] .....	739
Baltimore & Ohio R. R. Co., Hedden-Clark Lumber Co. <i>v.</i> [U. R. A-301] .....	727
Baltimore & Ohio R. R. Co., Holverscheid & Co. <i>v.</i> [U. R. A-299] .....	727
Baltimore & Ohio R. R. Co., Metropolis Bending Co. <i>v.</i> [U. R. A-368] .....	736
Baltimore & Ohio R. R. Co., Owens Bottle Machine Co. <i>v.</i> (5765) .....	718
Baltimore & Ohio R. R. Co., Scandinavian American Trading Co. <i>v.</i> [U. R. A-388] .....	739
Baltimore, Chesapeake & Atlantic Ry. Co., Eastern Shore Development S. S. Co. <i>v.</i> (5760) .....	718
Bangor & Aroostook R. R. Co., Butler Paper Co. <i>v.</i> [U. R. A-372] .....	737
Bangor & Aroostook R. R. Co. <i>v.</i> Maine Central R. R. Co. (5654) .....	716
Barnes Grocer Co. <i>v.</i> St. L. I. M. & S. Ry. Co. [U. R. A-283] ..	725
Baum Coal Co. <i>v.</i> C. & N. W. Ry. Co. [U. R. A-334] .....	732
Baum Iron Co. <i>v.</i> C. B. & Q. R. R. Co. [U. R. A-274] .....	724
Board of Railroad Com'rs. of Montana <i>v.</i> Great Northern Express Co. (5199) .....	714
Booth-Kelley Lumber Co. <i>v.</i> A. C. R. R. Co. (5404) .....	714
Boston & Maine R. R., American Hay Co. <i>v.</i> [U. R. A-286] ..	726
Boston & Maine R. R., Maine Spinning Co. <i>v.</i> [U. R. A-350] ..	734
Boyle Commission Co. <i>v.</i> W. P. Ry. Co. [U. R. A-327] .....	731
Brackney <i>v.</i> C. & N. W. Ry. Co. [U. R. A-343] .....	733
Bradford-Kennedy Lumber Co. <i>v.</i> T. & N. O. R. R. Co. [U. R. A-307] .....	728
Briggs & Turivas <i>v.</i> C. M. & St. P. Ry. Co. (5576) .....	715
Brook-Rauch Mill & Elevator Co. <i>v.</i> St. L. I. M. & S. Ry. Co. (4486) .....	711
Brunswick-Balke-Collender Co. <i>v.</i> L. S. & I. Ry. Co. (5726) ..	717
Buffalo & Susquehanna Ry. Co., Mills <i>v.</i> [U. R. A-268] .....	723

	Page.
Buffalo Cold Storage Co. v. S. A. & A. P. Ry. Co. [U. R. A-393]	740
Buffalo, Rochester & Pittsburgh Ry. Co., DuPre Co. v. [U. R. A-354].....	734
Burson Knitting Co. v. C. M. & St. P. Ry. Co. [U. R. A-375]..	737
Bush Terminal Co., Swedish Iron & Steel Corporation v. [U. R. A-323].....	730
Bushnell v. M. & N. A. R. R. Co. [U. R. A-288].....	726
Butcher Folding Crate Co. v. M. C. R. R. Co. (5516).....	715
Butler Paper Co. v. B. & A. R. R. Co. [U. R. A-372].....	737
Butler Paper Co. v. N. Y. C. & H. R. R. R. Co. [U. R. A-267]	723
Canadian Pacific Ry. Co., Swift Beef Co. (Ltd.) v. [U. R. A-284]	725
Carnegie Institute of Pittsburgh, Pa. v. U. Ry. Co. [U. R. A-329].....	731
Carroll v. C. & S. Ry. Co. [U. R. A-385].....	738
Cavers Elevator Co. v. M. P. Ry. Co. [U. R. A-349].....	734
Central R. R. Co. of N. J., American Metal Co. (Ltd.) v. (5812)	719
Central R. R. Co. of N. J., Wolf & Sons v. [U. R. A-298].....	727
Central Vermont Ry. Co., Hooker v. (5852).....	719
Central Vermont Ry. Co., McKenzie v. [U. R. A-359].....	735
Chamber of Commerce, Freight Bureau of Macon, Ga. v. M. D. & S. R. R. Co. (5489).....	715
Chamber of Commerce, Freight Bureau of Macon, Ga. v. N. & W. Ry. Co. (5126).....	713
Chamber of Commerce of Milwaukee v. C. M. & St. P. Ry. Co. (5359).....	714
Chattanooga Sewer Pipe & Fire Brick Co. v. N. C. & St. L. Ry. (5167).....	713
Chesapeake & Ohio Ry. Co., American Lumber & Mfg. Co. v. (5996).....	720
Chesapeake & Ohio Ry. Co., Continental Paper Bag Co. v. [U. R. A-369].....	736
Chesapeake & Ohio Ry. Co., Curll v. [U. R. A-347].....	733
Chesapeake & Ohio Ry. Co., Hall Lumber & Tie Co. v. [U. R. A-279].....	725
Chesapeake & Ohio Ry. Co., Hinton Fruit & Produce Co. v. [U. R. A-312].....	729
Chesapeake & Ohio Ry. Co., White Oak Coal Co. v. [U. R. A-271].....	724
Chesapeake & Potomac Telephone Co., Stephan v. (5722).....	717
Chicago & Alton R. R. Co., Clemons Produce Co. v. [U. R. A-324].....	730
Chicago & Alton R. R. Co., Koch Butchers Supply Co. v. [U. R. A-281].....	725
Chicago & Eastern Illinois R. R. Co., Indiana Sewer Pipe Co. v. (4977).....	712

	Page.
Chicago & Eastern Illinois R. R. Co., Ludowici-Celadon Co. v. (5871) .....	719
Chicago & North Western Ry. Co., Baum Coal Co. v. [U. R. A-334] .....	732
Chicago & North Western Ry. Co., Brackney v. [U. R. A-343] ..	733
Chicago & North Western Ry. Co., Currie Co. v. (5761) .....	718
Chicago & North Western Ry. Co., Dolese Bros. Co. v. (6057) ..	721
Chicago & North Western Ry. Co., Erickson Co. v. [U. R. A-272]	724
Chicago & North Western Ry. Co., Gisholt Machine Co. v. [U. R. A-391] .....	740
Chicago & North Western Ry. Co., Huiskamp Bros. Co. v. [U. R. A-278] .....	725
Chicago & North Western Ry. Co., Jetter Brewing Co. v. [U. R. A-308] .....	728
Chicago & North Western Ry. Co., Matthiessen & Hegeler Zinc Co. v. [U. R. A-273] .....	724
Chicago & North Western Ry. Co., Northern Wood Co. v. (5750) .....	717
Chicago & North Western Ry. Co., Smalley Mfg. Co. v. (5658) ..	716
Chicago & North Western Ry. Co., Smith Mfg. Co. v. [U. R. A-318] .....	730
Chicago, Burlington & Quincy R. R. Co., Baum Iron Co. v. [U. R. A-274] .....	724
Chicago, Burlington & Quincy R. R. Co., Colorado Portland Cement Co. v. [U. R. A-337] .....	732
Chicago, Burlington & Quincy R. R. Co., Dodds Lumber Co. v. [U. R. A-294] .....	727
Chicago, Burlington & Quincy R. R. Co., Gamble Robinson Fruit Co. v. [U. R. A-322] .....	730
Chicago, Burlington & Quincy R. R. Co., Jetter Brewing Co. v. [U. R. A-308] .....	728
Chicago, Burlington & Quincy R. R. Co., Lagomarcino-Grupe Co. v. [U. R. A-275] .....	724
Chicago, Burlington & Quincy R. R. Co., Lysle Milling Co. v. [U. R. A-265] .....	723
Chicago, Burlington & Quincy R. R. Co., Peters Mill Co. v. [U. R. A-332] .....	732
Chicago, Burlington & Quincy R. R. Co., Taylor v. [U. R. A-300] .....	727
Chicago, Burlington & Quincy R. R. Co., Thompson Mercantile Co. v. [U. R. A-385] .....	738
Chicago, Burlington & Quincy R. R. Co., United States Portland Cement Co. v. [U. R. A-337] .....	732
Chicago Great Western R. R. Co., Wyeth Hardware & Mfg. Co. v. (6107) .....	721

	Page.
Chicago, Indiana & Southern R. R. Co., Templeton & Sons v. [U. R. A-362].....	735
Chicago, Indianapolis & Louisville Ry. Co., Griswold v. (5542) ..	715
Chicago, Milwaukee & St. Paul Ry. Co., Briggs & Turivas v. (5576) .....	715
Chicago, Milwaukee & St. Paul Ry. Co., Burson Knitting Co. v. [U. R. A-375].....	737
Chicago, Milwaukee & St. Paul Ry. Co., Chamber of Commerce of Milwaukee v. (5359) .....	714
Chicago, Milwaukee & St. Paul Ry. Co., Daniels Linseed Co. v. [U. R. A-277] .....	724
Chicago, Milwaukee & St. Paul Ry. Co., Erickson Co. v. (5739) ..	717
Chicago, Milwaukee & St. Paul Ry. Co., Gamble-Robinson Commission Co. v. [U. R. A-339; A-345].....	732, 733
Chicago, Milwaukee & St. Paul Ry. Co., Gund Brewing Co. v. [U. R. A-363] .....	735
Chicago, Milwaukee & St. Paul Ry. Co., Knickerbocker Ice Co. v. (4234) .....	711
Chicago, Milwaukee & St. Paul Ry. Co., Leavitt & Co. v. (4789) .....	712
Chicago, Milwaukee & St. Paul Ry. Co., Salt Lake Glass & Paint Co. v. [U. R. A-357] .....	735
Chicago, Milwaukee & St. Paul Ry. Co., Scully Steel & Iron Co. v. (4884) .....	712
Chicago, Racine & Milwaukee Line, Lovett, in behalf of Milliren-Buchanan Hardware Co. v. (5780) .....	718
Chicago, Rock Island & Pacific Ry. Co., Lagomarcino-Grupe Co. v. [U. R. A-352].....	734
Chicago, Rock Island & Pacific Ry. Co., Marseilles Wrapping Paper Co. v. (5970) .....	720
Chicago, Rock Island & Pacific Ry. Co., Minneapolis Threshing Machine Co. v. (4634) .....	712
Chicago, Rock Island & Pacific Ry. Co., Potts v. (5798) .....	718
Chicago, St. Paul, Minneapolis & Omaha Ry. Co., McCaull-Dinsmore Co. v. [U. R. A-342] .....	733
Churchill Grain & Seed Co. v. W. S. R. R. Co. [U. R. A-373]..	737
Cincinnati Northern R. R. Co., Western Ohio Creamery Co. v. (5613) .....	715
Clapp & Co. v. American Express Co. [U. R. A-335].....	732
Clemons Produce Co. v. C. & A. R. R. Co. [U. R. A-324]....	730
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co., O'Gara Coal Co. v. (4959) .....	712
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co., Patent Vulcanite Roofing Co. v. [U. R. A-306].....	728

	Page.
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co., Shortsville Wheel Co. v. [U. R. A-387] .....	739
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co., University of Wisconsin v. (5727) .....	717
Colorado & Southern Ry. Co., McDougall v. [U. R. A-385] ..	738
Colorado & Southern Ry. Co., Stewart v. [U. R. A-341] .....	733
Colorado Midland Ry. Co., Munro Mercantile Co. v. (5021) ..	713
Colorado Portland Cement Co. v. C. B. & Q. R. R. Co. [U. R. A-337] .....	732
Commercial Club of Omaha v. A. & S. R. Ry. Co. [U. R. A-263].	723
Commission Merchants National League of the United States v. P. R. R. Co. [U. R. A-313] .....	729
Conrad Mercantile Co., Montana R. R. Com'rs. in behalf of, v. Great Northern Express Co. (5199) .....	714
Continental Paper Bag Co. v. C. & O. Ry. Co. [U. R. A-369] ..	736
Continental Paper Bag Co. v. G. & J. Ry. Co. [U. R. A-346] ..	735
Corporation Commission of Arizona v. A. E. R. R. Co. (5320) ..	714
Corporation Commission of Oklahoma, for Arnett Telephone Co. v. American Telephone & Telegraph Co. (5953) .....	720
Cranston Lumber Co. v. N. S. R. R. Co. [U. R. A-377] .....	737
Cumberland Valley R. R. Co., Frick Co., v. [U. R. A-382] ....	738
Currie Co. v. C. & N. W. Ry. Co. (5761) .....	718
Curl v. C. & O. Ry. Co. [U. R. A-347] .....	733
Daley v. U. P. R. R. Co. [U. R. A-385] .....	739
Daniels Linseed Co. v. C. M. & St. P. Ry. Co. [U. R. A-277] ..	724
Davis Milling Co. v. A. T. & S. F. Ry. Co. [U. R. A-398] .....	740
Delphos Mfg. Co. v. P. Co. (5753) .....	718
Denver & Rio Grande R. R. Co., Althoff Mfg. Co. v. (4820) ..	712
Denver & Rio Grande R. R. Co., Moore Hardware & Iron Co. v. [U. R. A-392] .....	740
Denver Northwestern & Pacific Ry. Co., Norvell Mercantile Co. v. (5084) .....	713
Dewey Portland Cement Co. v. A. T. & S. F. Ry. Co. (4949) ..	712
Dodds Lumber Co. v. C. B. & Q. R. R. Co. [U. R. A-294] .....	727
Dolese Bros. Co. v. C. & N. W. Ry. Co. (6057) .....	721
Dover Mfg. Co. v. P. Co. [U. R. A-384] .....	738
Dowd Knife Works v. W. R. R. Co. (5035) .....	713
Duluth Iron & Metal Co. v. N. P. Ry. Co. [U. R. A-336] .....	732
DuPre Co. v. B. R. & P. Ry. Co. [U. R. A-354] .....	734
Eastern Shore Development S. S. Co. v. B. C. & A. Ry. Co. (5760) .....	718
Eastman v. U. P. R. R. Co. [U. R. A-385] .....	738
Elgin, Joliet & Eastern Ry. Co., Hull Co. v. [U. R. A-340] ....	733
Erickson Co. v. C. & N. W. Ry. Co. [U. R. A-272] .....	724

	Page.
Erickson Co. v. C. M. & St. P. Ry. Co. (5739) .....	717
Erie R. R. Co., Kittoe Boiler & Tank Co. v. [U. R. A-319] .....	730
Erie R. R. Co., West Co. v. [U. R. A-316] .....	729
Florida Citrus Exchange v. S. A. L. Ry. [U. R. A-264] .....	723
Freight Bureau, Chamber of Commerce of Macon, Ga. v. M. D. & S. R. R. Co. (5489) .....	715
Freight Bureau, Chamber of Commerce of Macon, Ga. v. N. & W. Ry. Co. (5126) .....	713
Freight Bureau of Little Rock for Mt. Olive Stave Co. v. St. L. I. M. & S. Ry. Co. (5935) .....	720
French Battery & Carbon Co. v. L. S. & M. S. Ry. Co. [U. R. A-374] .....	737
Frick Co. v. C. V. R. R. Co. [U. R. A-382] .....	738
Fullerton-Powell Hardwood Lumber Co. v. M. & N. F. R. R. Co. [U. R. A-367] .....	736
Gamble-Robinson Commission Co. v. A. & B. R. Ry. Co. [U. R. A-395] .....	740
Gamble-Robinson Commission Co. v. C. M. & St. P. Ry. Co. [U. R. A-339; A-345] .....	732, 733
Gamble Robinson Fruit Co. v. C. B. & Q. R. R. Co. [U. R. A-322] .....	730
Gisholt Machine Co. v. C. & N. W. Ry. Co. [U. R. A-391] .....	740
Glavin v. American Express Co. [U. R. A-328] .....	731
Godfrey & Son v. Graham & Morton Trans. Co. (4000) .....	711
Goldfield Consolidated Milling & Transportation Co. v. S. P. Co. [U. R. A-266] .....	723
Goldfield Consolidated Mines Co. v. M. P. Ry. Co. [U. R. A-381] .....	738
Goldfield Consolidated Mines Co. v. P. Co. [U. R. A-386] .....	739
Goldfield Consolidated Mines Co. v. S. P. L. A. & S. L. R. R. Co. [U. R. A-379] .....	737
Goldfield Consolidated Mines Co. v. S. P. Co. [U. R. A-266; A-292] .....	723
Graham & Morton Transportation Co., Godfrey & Son v. (4000) .....	711
Grand Rapids & Indiana Ry. Co., Lindsay Bros. v. [U. R. A-326] .....	731
Great Northern Express Co., Board of Railroad Com'rs. of Montana v. (5199) .....	714
Great Northern Ry. Co., Omaha Grain Exchange v. (5736) ..	717
Great Northern Ry. Co., Smith System Heating Co. v. [U. R. A-296] .....	727
Great Northern Ry. Co., Spokane Drug Co. v. [U. R. A-370] ..	736

	Page.
Greenwich & Johnsonville Ry. Co., Continental Paper Bag Co. v. [U. R. A-346].....	733
Griswold v. C. I. & L. Ry. Co. (5542).....	715
Gulf & Ship Island R. R. Co., Hettler Lumber Co. v. [U. R. A-364]	736
Gulf, Colorado & Santa Fe Ry. Co., Miller & Co. v. [U. R. A-380].....	738
Gund Brewing Co. v. C. M. & St. P. Ry. Co. [U. R. A-363]....	735
Guntersville Navigation Co. v. S. Ry. Co. (4563).....	711
Haarmann Vinegar & Pickle Co. v. M. P. Ry. Co. (5784).....	718
Hall Lumber & Tie Co. v. C. & O. Ry. Co. [U. R. A-279].....	725
Hall Lumber Co. v. St. L. & S. F. R. R. Co. (6226).....	721
Hastings Co. v. St. L. & S. F. R. R. Co. [U. R. A-399].....	740
Hedden-Clark Lumber Co. v. B. & O. R. R. Co. [U. R. A-301]..	727
Heger v. Adams Express Co. [U. R. A-397].....	740
Hen-e-ta Bone Co. v. L. & N. R. R. Co. (5173).....	713
Hess v. U. P. R. R. Co. [U. R. A-385].....	738
Hettler Lumber Co. v. G. & S. I. R. R. Co. [U. R. A-364]....	736
Hettler Lumber Co. v. M. C. R. R. Co. [U. R. A-302].....	728
Hinsch-Briscoe Coal Co. (Inc.) v. V. R. R. Co. (5858).....	719
Hinton Fruit & Produce Co. v. C. & O. Ry. Co. [U. R. A-312]..	729
Holland, Director, etc. v. U. Ry. Co. [U. R. A-329].....	731
Holverscheid & Co. v. B. & O. R. R. Co. [U. R. A-299].....	727
Homer Lumber Co. v. S. A. L. Ry. [U. R. A-351].....	734
Hooker v. C. V. Ry. Co. (5852).....	719
Houston Packing Co. v. T. & N. O. R. R. Co. [U. R. A-282]..	725
Huiskamp Bros. Co. v. C. & N. W. Ry. Co. [U. R. A-278]....	725
Hull Co. v. E. J. & E. Ry. Co. [U. R. A-340].....	733
Hunter, Casteel & Hunter Co. v. L. H. P. & P. Ry. Co. [U. R. A-385].....	738
Huron Milling Co. v. P. M. R. R. Co. [U. R. A-396].....	740
Illinois Central R. R. Co., Peycke Bros. Commission Co. v. (6002).....	720
Illinois Central R. R. Co., United States Cast Iron Pipe & Foundry Co. v. [U. R. A-314].....	729
Indiana Sewer Pipe Co. v. C. & E. I. R. R. Co. (4977).....	712
Inman v. Union Pacific R. R. Co. [U. R. A-385].....	738
International & Great Northern Ry. Co., West Co. v. [U. R. A-317].....	730
Iowa Northern Ry. Co., Kerper v. (5683).....	716
Jenson v. S. & E. Ry. Co. [U. R. A-385].....	739
Jetter Brewing Co. v. C. B. & Q. R. R. Co. [U. R. A-308]....	728
Kansas City Hay Co. v. M. P. Ry. Co. (5636).....	716
Kansas City Millers' Club v. K. C. S. Ry. Co. (5364).....	714



	Page.
Kansas City Southern Ry. Co., Kansas City Millers' Club v. (5364).....	714
Kansas City Southern Ry. Co., Monarch Metal Mfg. Co. v. [U. R. A-305].....	728
Kansas Portland Cement Co. v. M. K. & T. Ry. Co. [U. R. A-353].....	734
Kemmerer Hardware & Furniture Co. v. U. P. R. R. Co. [U. R. A-293].....	726
Kennessee Coal Co. v. K. & T. Ry. (4720).....	712
Kenney v. C. & S. Ry. Co. [U. R. A-385].....	739
Kentucky & Tennessee Ry., Kennessee Coal Co. v. (4720)....	712
Kerper v. I. N. Ry. Co. (5683).....	716
Kirkpatrick v. S. K. Ry. Co. of Tex. [U. R. A-270].....	724
Kittoe Boiler & Tank Co. v. E. R. R. Co. [U. R. A-319].....	730
Knickerbocker Ice Co. v. C. M. & St. P. Ry. Co. (4234).....	711
Koch Butchers Supply Co. v. C. & A. R. R. Co. [U. R. A-281]..	725
Krauss Bros. Lumber Co. v. N. C. & St. L. Ry. [U. R. A-315]..	729
Kunz Grain Co. v. M. & St. L. R. R. Co. [U. R. A-280].....	725
Lagomarcino-Grupe Co. v. C. B. & Q. R. R. Co. [U. R. A-275]..	724
Lagomarcino-Grupe Co. v. C. R. I. & P. Ry. Co. [U. R. A-352]..	734
Lake Shore & Michigan Southern Ry. Co., French Battery & Carbon Co. v. [U. R. A-374].....	737
Lake Superior & Ishpeming Ry. Co., Brunswick-Balke-Collender Co. v. (5726) .....	717
Lamar Mill & Elevator Co. v. A. T. & S. F. Ry. Co. [U. R. A-290].....	726
Lane Bros. Co. v. V. Ry. Co. (6013) .....	720
Laramie, Hahns Peak & Pacific Ry. Co., Hunter, Casteel & Hunter Co. v. [U. R. A-385] .....	738
Larsen v. U. P. R. R. Co. [U. R. A-385].....	738
Leach & Co. v. S. Ry. Co. (6049).....	720
Leavitt & Co. v. C. M. & St. P. Ry. Co. (4789).....	712
Lindsay Brothers v. G. R. & I. Ry. Co. [U. R. A-326].....	731
Little Rock Merchants Freight Bureau for Mt. Olive Stave Co. v. St. L. I. M. & S. Ry. Co. (5935).....	720
Loew Mfg. Co. v. N. Y. C. & St. L. R. R. Co. [U. R. A-378]..	737
Loewenberg & Going Co., Jubitz, Assignee, v. O. W. R. R. & Nav. Co. [U. R. A-361].....	735
Louisiana Railroad Commission v. T. & P. Ry. Co. [U. R. A-311].....	729
Louisville & Nashville R. R. Co., American Naval Stores Co. v. [U. R. A-285].....	725
Louisville & Nashville R. R. Co., Bagdad Land & Lumber Co. v. [U. R. A-320].....	730

	Page.
Louisville & Nashville R. R. Co., Hen-e-ta Bone Co. v. (5173) ..	713
Louisville & Nashville R. R. Co., Louisville Cement Co. v. [U. R. A-333] .....	732
Louisville & Nashville R. R. Co., St. Matthews Produce Ex- change (Inc.) v. (5870) .....	719
Louisville & Nashville R. R. Co., Schloss & Kahn v. (6161) ...	721
Louisville & Nashville R. R. Co., Sheboygan Mineral Water Co. v. [U. R. A-371] .....	736
Louisville & Nashville R. R. Co., Stearns & Culver Lumber Co. v. [U. R. A-320]; (5549) .....	715, 730
Louisville Cement Co. v. L. & N. R. R. Co. [U. R. A-333] .....	732
Lovett, in behalf of Milliren-Buchanan Hardware Co. v. C. R. & M. Line (5780) .....	718
Lowery-Hanks Co. v. Southern Express Co. (5652) .....	716
Ludowici-Celadon Co. v. C. & E. I. R. R. Co. (5871) .....	719
Lysle Milling Co. v. C. B. & Q. R. R. Co. [U. R. A-265] .....	723
McCaull-Dinsmore Co. v. C. St. P. M. & O. Ry. Co. [U. R. A-342]	733
McDougall v. C. & S. Ry. Co. [U. R. A-385] .....	738
McGillan v. S. P. Co. [U. R. A-303] .....	728
McKenzie v. C. V. Ry. Co. [U. R. A-359] .....	735
Macon Chamber of Commerce Freight Bureau v. M. D. & S. R. R. Co. (5489) .....	715
Macon, Dublin & Savannah R. R. Co., Freight Bureau, Cham- ber of Commerce of Macon, Ga. v. (5489) .....	715
Macon Freight Bureau Chamber of Commerce v. N. & W. Ry. Co. (5126) .....	713
Maine Central R. R. Co., Bangor & Aroostook R. R. Co. v. (5654) .....	716
Maine Spinning Co. v. B. & M. R. R. [U. R. A-350] .....	734
Marseilles Wrapping Paper Co. v. C. R. I. & P. Ry. Co. (5970) ..	720
Matthiessen & Hegeler Zinc Co. v. C. & N. W. Ry. Co. [U. R. A-273] .....	724
Merchants Freight Bureau of Little Rock, Ark., for Mt. Olive Stave Co. v. St. L. I. M. & S. Ry. Co. (5935) .....	720
Metropolis Bending Co. v. B. & O. R. R. Co. [U. R. A-368] ...	736
Meyer & Raife v. U. P. R. R. Co. [U. R. A-385] .....	738
Michigan Central R. R. Co., Butcher Folding Crate Co. v. (5516) .....	715
Michigan Hardwood Mfrs'. Asso. v. T. F. B. [U. R. A-390] ...	739
Miller & Co. v. G. C. & S. F. Ry. Co. [U. R. A-380] .....	738
Miller & Co. v. P. M. R. R. Co. [U. R. A-309] .....	729
Milliren-Buchanan Hardware Co., Lovett in behalf of v. C. R. & M. Line (5780) .....	718
Mills v. B. & S. Ry. Co. [U. R. A-268] .....	723

TABLE OF MEMORANDUM AND UNREPORTED CASES.

	753
	Page.
Milne & Hector v. N. Y. N. H. & H. R. R. Co. [U. R. A-331]..	731
Milwaukee Chamber of Commerce v. C. M. & St. P. Ry. Co. (5359).....	714
Minneapolis & St. Louis R. R. Co., Kunz Grain Co. v. [U. R. A-280].....	725
Minneapolis, St. Paul & Sault Ste. Marie Ry. Co., Oetting Bros. Ice Co. v. (5925).....	719
Minneapolis Threshing Machine Co. v. C. R. I. & P. Ry. Co. (4634).....	712
Mississippi Central R. R. Co., Hettler Lumber Co. v. [U. R. A-302].....	728
Missouri & North Arkansas R. R. Co., Bushnell v. [U. R. A-288]	726
Missouri, Kansas & Texas Ry. Co., Kansas Portland Cement Co. v. [U. R. A-353].....	734
Missouri, Kansas & Texas Ry. Co., Napoleon Hill Cotton Co. v. [U. R. A-344].....	733
Missouri, Kansas & Texas Ry. Co., Stewart v. [U. R. A-297]..	727
Missouri Pacific Ry. Co., Cavers Elevator Co. v. [U. R. A-349]..	734
Missouri Pacific Ry. Co., Goldfield Consolidated Mines Co. v. [U. R. A-381].....	738
Missouri Pacific Ry. Co., Haarmann Vinegar & Pickle Co. v. (5784).....	718
Missouri Pacific Ry. Co., Kansas City Hay Co. v. (5636).....	716
Missouri Pacific Ry. Co., United Kansas Portland Cement Co. v. [U. R. A-321].....	730
Monarch Metal Mfg. Co. v. K. C. S. Ry. Co. [U. R. A-305]...	728
Montana Board of Railroad Commissioners in behalf of Conrad Mercantile Co. v. Great Northern Express Co. (5199).....	714
Moore Hardware & Iron Co. v. D. & R. G. R. R. Co. [U. R. A-392].....	740
Morehead & North Fork R. R. Co., Fullerton-Powell Hardwood Lumber Co. v. [U. R. A-367].....	736
Morgan's Louisiana & Texas R. R. & S. S. Co., Anderson- Tully Co. v. (5191).....	713
Morton v. U. P. R. R. Co. [U. R. A-385].....	738
Mount Olive Stave Co., Little Rock Merchants Freight Bureau for, v. St. L. I. M. & S. Ry. Co. (5935).....	720
Munro Mercantile Co. v. C. M. Ry. Co. (5021).....	713
Namm v. P. R. R. Co. [U. R. A-394].....	740
Napoleon Hill Cotton Co. v. M. K. & T. Ry. Co. [U. R. A-344]..	733
Nashville, Chattanooga & St. Louis Ry., Chattanooga Sewer Pipe & Fire Brick Co. v. (5167).....	713
Nashville, Chattanooga & St. Louis Ry., Krauss Bros. Lumber Co. v. [U. R. A-315].....	729

	Page
Nashville, Chattanooga & St. Louis Ry., United States Cast Iron Pipe & Foundry Co. v. [U. R. A-314].....	729
National League of Commission Merchants of the United States v. P. R. R. Co. [U. R. A-313].....	729
New Jersey & Pennsylvania Traction Co., Sheeler v. (5160)...	713
New York Central & Hudson River R. R. Co., Butler Paper Co. v. [U. R. A-267].....	723
New York Central & Hudson River R. R. Co., Schaller v. [U. R. A-376].....	737
New York, Chicago & St. Louis R. R. Co., Loew Mfg. Co. v. [U. R. A-378].....	737
New York, Chicago & St. Louis R. R. Co., Sheldon & Co. v. [U. R. A-276].....	724
New York, New Haven & Hartford R. R. Co., Milne & Hector v. [U. R. A-331].....	731
Norfolk & Western Ry. Co., Freight Bureau Chamber of Commerce, Macon, Ga., v. (5126) .....	713
Norfolk & Western Ry. Co., Thornhill Wagon Co. v. [U. R. A-383].....	738
Norfolk Southern R. R. Co., Cranston Lumber Co. v. [U. R. A-377].....	737
Northern Pacific Ry. Co., Duluth Iron & Metal Co. v. [U. R. A-336].....	732
Northern Wood Co. v. C. & N. W. Ry. Co. (5750).....	717
Norvell Mercantile Co. v. D. N. W. & P. Ry. Co. (5084).....	713
Oetting Bros. Ice Co. v. M. St. P. & S. Ste. M. Ry. Co. (5925) ..	719
O'Gara Coal Co. v. C. C. C. & St. L. Ry. Co. (4959) .....	712
Oklahoma Corporation Commission in behalf of Arnett Telephone Co. v. American Telephone & Telegraph Co. (5953) ..	720
Omaha Commercial Club v. A. & S. R. Ry. Co. [U. R. A-263] ..	723
Omaha Grain Exchange v. G. N. Ry. Co. (5736) .....	717
Oregon Short Line R. R. Co., Boyle Commission Co. v. [U. R. A-327] .....	731
Oregon Short Line R. R. Co., Smurthwaite Grain & Milling Co. v. [U. R. A-295].....	727
Oregon-Washington R. R. & Navigation Co., Loewenberg & Going Co., Jubitz, Assignee v. [U. R. A-361].....	735
Owens Bottle Machine Co. v. B. & O. R. R. Co. (5765) .....	718
Pacific Creamery Co. v. A. T. & S. F. Ry. Co. [U. R. A-291] ..	726
Pacific Creamery Co. v. S. P. Co. [U. R. A-356].....	735
Parkison v. S. & E. Ry. Co. [U. R. A-385].....	739
Patent Vulcanite Roofing Co. v. C. C. C. & St. L. Ry. Co. [U. R. A-306].....	728
Patterson v. C. & S. Ry. Co. [U. R. A-385].....	738

	Page.
Patteson & Co. v. Atlantic City R. R. Co. (5645) .....	716
Pendleton Grain Co. v. T. R. R. Asso. of St. Louis (5469)....	715
Pennsylvania Co., Atlas Brewing Co. v. [U. R. A-289] .....	726
Pennsylvania Co., Delphos Mfg. Co. v. (5753) .....	718
Pennsylvania Co., Dover Mfg. Co. v. [U. R. A-384] .....	738
Pennsylvania Co., Goldfield Consolidated Mines Co. v. [U. R. A-386] .....	739
Pennsylvania Co., Standard Oil Co. v. (4518) .....	711
Pennsylvania Co., Wadsworth Salt Co. v. (5482) .....	715
Pennsylvania R. R. Co., Namm v. [U. R. A-394] .....	740
Pennsylvania R. R. Co., National League of Commission Mer- chants of the United States v. [U. R. A-313] .....	729
Pennsylvania R. R. Co., Red Bank Mills v. (5861) .....	719
Pennsylvania R. R. Co., Scully Syrup Co. v. [U. R. A-360]...	735
Pere Marquette R. R. Co., Huron Milling Co. v. [U. R. A-396].	740
Pere Marquette R. R. Co., Miller & Co. v. [U. R. A-309] .....	729
Peters Mill Co. v. C. B. & Q. R. R. Co. [U. R. A-332] .....	732
Peycke Bros. Commission Co. v. I. C. R. R. Co. (6002) .....	720
Plummer v. S. & E. Ry. Co. [U. R. A-385] .....	739
Plummer Mfg. Co. v. A. T. & S. F. Ry. Co. (5796) .....	718
Potts v. C. R. I. & P. Ry. Co. (5798) .....	718
Railroad Commission of Louisiana v. T. & P. Ry. Co. [U. R. A-311] .....	729
Railroad Commissioners of Montana in behalf of Conrad Mercantile Co. v. Great Northern Express Co. (5199) .....	714
Railway Commission of Arizona v. Wells Fargo & Co. (3667) ..	711
Ramsey & Co. v. R. G. & E. P. R. R. Co. [U. R. A-355] .....	734
Red Bank Mills v. P. R. R. Co. (5861) .....	719
Rees & Wagner v. St. L. & S. F. R. R. Co. [U. R. A-358] .....	735
Republic Flour Mills Co. v. St. L. & S. F. R. R. Co. (5878)...	719
Rio Grande & El Paso R. R. Co., Ramsey & Co. v. [U. R. A-355] .....	734
Rosenbaum Grain Co. v. U. P. R. R. Co. (5797) .....	718
St. Louis & San Francisco R. R. Co., American Land Timber & Stave Co. v. (5718) .....	717
St. Louis & San Francisco R. R. Co., Arkansas Fruit Co. v. [U. R. A-304] .....	728
St. Louis & San Francisco R. R. Co., Hall Lumber Co. v. (6226) .....	721
St. Louis & San Francisco R. R. Co., Hastings Co. v. [U. R. A-399] .....	740
St. Louis & San Francisco R. R. Co., Rees & Wagner v. [U. R. A-358] .....	735
St. Louis & San Francisco R. R. Co., Republic Flour Mills Co. v. (5878) .....	719

	Page.
St. Louis & San Francisco R. R. Co., United States Gypsum Co. v. [U. R. A-310] .....	729
St. Louis Cotton Exchange v. A. T. & S. F. Ry. Co. (5677) ..	716
St. Louis, Iron Mountain & Southern Ry. Co., Barnes Grocer Co. v. [U. R. A-283] .....	725
St. Louis, Iron Mountain & Southern Ry. Co., Brook-Rauch Mill & Elevator Co. v. (4486) .....	711
St. Louis, Iron Mountain & Southern Ry. Co., Merchants Freight Bureau of Little Rock, Ark., for Mt. Olive Stave Co. v. (5935) .....	720
St. Matthews Produce Exchange (Inc.) v. L. & N. R. R. Co. (5870) .....	719
Salt Lake Glass & Paint Co. v. C. M. & St. P. Ry. Co. [U. R. A-357] .....	735
San Antonio & Aransas Pass Ry. Co., Buffalo Cold Storage Co. v. [U. R. A-393] .....	740
San Pedro, Los Angeles & Salt Lake R. R. Co., Goldfield Consolidated Mines Co. v. [U. R. A-379] .....	737
Saratoga & Encampment Ry. Co., Jenson v. [U. R. A-385] .....	739
Scandinavian American Trading Co. v. B. & O. R. R. Co. [U. R. A-388] .....	739
Schaller v. N. Y. C. & H. R. R. R. Co. [U. R. A-376] .....	737
Schloss & Kahn v. L. & N. R. R. Co. (6161) .....	721
Scott-Mayer Commission Co. v. A. T. & S. F. Ry. Co. [U. R. A-330] .....	731
Scully Steel & Iron Co. v. C. M. & St. P. Ry. Co. (4884) .....	712
Scully Syrup Co. v. P. R. R. Co. [U. R. A-360] .....	735
Seaboard Air Line Ry., Florida Citrus Exchange v. [U. R. A-264] .....	723
Seaboard Air Line Ry., Homer Lumber Co. v. [U. R. A-351] ..	734
Seaboard Air Line Ry., Williams & Shelton Co. v. (5342) .....	714
Sheboygan Mineral Water Co. v. L. & N. R. R. Co. [U. R. A-371] .....	736
Sheeler v. N. J. & P. T. Co. (5160) .....	713
Sheldon & Co. v. N. Y. C. & St. L. R. R. Co. [U. R. A-276] .....	724
Shortsville Wheel Co. v. C. C. C. & St. L. Ry. Co. [U. R. A-387] ..	739
Smalley Mfg. Co. v. C. & N. W. Ry. Co. (5658) .....	716
Smith Lumber Co. v. S. P. Co. [U. R. A-389] .....	739
Smith Mfg. Co. v. C. & N. W. Ry. Co. [U. R. A-318] .....	730
Smith System Heating Co. v. G. N. Ry. Co. [U. R. A-296] .....	727
Smoot & Sons Co. v. S. Ry. Co. (5470) .....	715
Smurthwaite Grain & Milling Co. v. O. S. L. R. R. Co. [U. R. A-295] .....	727
Southern Express Co., Lowery-Hanks Co. v. (5652) .....	716

	Page.
Southern Kansas Ry. Co. of Texas, Kirkpatrick v. [U. R. A-270].....	724
Southern Pacific Co., Goldfield Consolidated Milling & Transportation Co. v. [U. R. A-266].....	723
Southern Pacific Co., Goldfield Consolidated Mines Co. v. [U. R. A-266; A-292].....	723
Southern Pacific Co., McGillan v. [U. R. A-303].....	728
Southern Pacific Co., Pacific Creamery Co. v. [U. R. A-356]..	735
Southern Pacific Co., Smith Lumber Co. v. [U. R. A-389]....	739
Southern Pacific Co., Sulzberger & Sons Co. v. [U. R. A-400]..	740
Southern Ry. Co., Guntersville Navigation Co. v. (4563).....	711
Southern Ry. Co., Leach & Co. v. (6049).....	720
Southern Ry. Co., Smoot & Sons Co. v. (5470).....	715
Spokane Drug Co. v. G. N. Ry. Co. [U. R. A-370].....	736
Standard Oil Co. v. P. Co. (4518).....	711
Stearns & Culver Lumber Co. v. L. & N. R. R. Co. [U. R. A-320]; (5549).....	715, 730
Steinhardt & Co. v. T. & P. Ry. Co. [U. R. A-325; A-338]..	731, 732
Stephan v. C. & P. Telephone Co. (5722).....	717
Sterling Pickling Works v. W. R. R. Co. [U. R. A-348].....	734
Stewart v. C. & S. Ry. Co. [U. R. A-341].....	733
Stewart v. M. K. & T. Ry. Co. [U. R. A-297].....	727
Sugarland Ry. Co., Wagner & Sons v. [U. R. A-287].....	726
Sulzberger & Sons Co. v. S. P. Co. [U. R. A-400].....	741
Swedish Iron & Steel Corporation v. B. T. Co. [U. R. A-323]..	730
Swift Beef Co. (Ltd.) v. C. P. Ry. Co. [U. R. A-284].....	725
Taylor v. C. B. & Q. R. R. Co. [U. R. A-300].....	727
Templeton & Sons v. C. I. & S. R. R. Co. [U. R. A-362].....	735
Terminal R. R. Asso. of St. Louis, Pendleton Grain Co. v. (5469).....	715
Texas & Gulf Ry. Co., Waterman Lumber & Supply Co. v. [U. R. A-269].....	723
Texas & New Orleans R. R. Co., Bradford-Kennedy Lumber Co. v. [U. R. A-307].....	728
Texas & New Orleans R. R. Co., Houston Packing Co. v. [U. R. A-282].....	725
Texas & Pacific Ry. Co., Railroad Commission of Louisiana v. [U. R. A-311].....	729
Texas & Pacific Ry. Co., Steinhardt & Co. v. [U. R. A-325; A-338].....	731, 732
Thompson Mercantile Co. v. C. B. & Q. R. R. Co. [U. R. A-385].....	738
Thornhill Wagon Co. v. N. & W. Ry. Co. [U. R. A-383].....	738
Trail v. W. & O. D. Ry. Co. (5225).....	714

	Page.
Transcontinental Freight Bureau, Michigan Hardwood Mfrs.' Asso. v. [U. R. A-390].....	739
Tunis-Cockey Lumber Co. v. A. C. L. R. R. Co. [U. R. A-366]	736
Uintah Ry. Co., Holland, Director of the Carnegie Institute of Pittsburgh, Pa. v. [U. R. A-329].....	731
Union Pacific R. R. Co., Hess v. [U. R. A-385] .....	738
Union Pacific R. R. Co., Kemmerer Hardware & Furniture Co. v. [U. R. A-293].....	726
Union Pacific R. R. Co., Rosenbaum Grain Co. v. (5797).....	718
United Kansas Portland Cement Co. v. M. P. Ry. Co. [U. R. A-321].....	730
United States Cast Iron Pipe & Foundry Co. v. N. C. & St. L. Ry. [U. R. A-314].....	729
United States Gypsum Co. v. St. L. & S. F. R. R. Co. [U. R. A-310].....	729
United States National League of Commission Merchants v. P. R. R. Co. [U. R. A-313].....	729
University of Wisconsin v. C. C. C. & St. L. Ry. Co. (5727) ..	717
Vandalia R. R. Co., Hinsch-Briscoe Coal Co. (Inc.) v. (5858) ..	719
Virginian Ry. Co., Lane Bros. Co. v. (6013).....	720
Wabash R. R. Co., Dowd Knife Works v. (5035).....	713
Wabash R. R. Co., Sterling Pickling Works v. [U. R. A-348] ..	734
Wadsworth Salt Co. v. P. Co. (5482) .....	715
Wagner & Sons v. Sugarland Ry. Co. [U. R. A-287].....	726
Washington & Old Dominion Ry. Co., Trail v. (5225).....	714
Waterman Lumber & Supply Co. v. T. & G. Ry. Co. [U. R. A-269].....	723
Wells Fargo & Co., Arizona Railway Commission v. (3667) ....	711
West Co. v. E. R. R. Co. [U. R. A-316] .....	729
West Co. v. I. & G. N. Ry. Co. [U. R. A-317].....	730
West Shore R. R. Co., Churchill Grain & Seed Co. v. [U. R. A-373].....	737
Western Maryland Ry. Co., Williams v. [U. R. A-365].....	736
Western Ohio Creamery Co. v. C. N. R. R. Co. (5613).....	715
Western Pacific Ry. Co., Boyle Commission Co. v. [U. R. A-327]	731
Wheatland Hardware Co. v. C. & S. Ry. Co. [U. R. A-385].....	739
White Oak Coal Co. v. C. & O. Ry. Co. [U. R. A-271] .....	724
Williams & Shelton Co. v. S. A. L. Ry (5342) .....	714
Williams v. C. & S. Ry. Co. [U. R. A-385] .....	738
Williams v. W. M. Ry. Co. [U. R. A-365].....	736
Wisconsin University v. C. C. C. & St. L. Ry. Co. (5727).....	717
Wolf & Sons v. C. R. R. Co. of N. J. [U. R. A-298].....	727
Wyeth Hardware & Mfg. Co. v. C. G. W. R. R. Co. (6107) ....	721



REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF  
THE COMMISSION DURING THE TIME COVERED BY THIS  
VOLUME.

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4995. AMERICAN DYNALITE COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL. July 3, 1913. Reparation for \$88.61 on shipments of dynalite from Amherst, Ohio, to Ottawa, Ill., on account of excessive rates.

5331. CENTRAL COAL & COKE COMPANY v. MISSOURI & LOUISIANA RAILROAD COMPANY ET AL. July 16, 1913. Reparation for \$1,993.87 on shipments of coal from coal mines near Bonanza, Ark., to points in Oklahoma, Missouri, Iowa, Kansas, and Nebraska, on account of excessive rates.

4555. McLAUGHLIN MOTOR CAR COMPANY (LTD.) v. GRAND TRUNK RAILWAY COMPANY OF CANADA ET AL. September 8, 1913. Reparation for \$5,250.28 on shipments of automobile chassis from Flint, Mich., to Oshawa, Ontario, on account of excessive rates.

4815. VIRGINIA-CAROLINA CHEMICAL COMPANY v. ATLANTIC COAST LINE RAILROAD COMPANY. September 8, 1913. Reparation for \$65.36 on shipments of fertilizer from Wadesboro, N. C., to points in South Carolina, on account of excessive rates.

4861. BARTLETT COMPANY v. CHICAGO, PEORIA & ST. LOUIS RAILROAD COMPANY OF ILLINOIS ET AL. October 4, 1913. Reparation for \$3,811.20 on shipments of oats from Peoria, Ill., to Birmingham and Montgomery, Ala., on account of excessive rates.

5011. KAMM v. PENNSYLVANIA COMPANY ET AL. October 15, 1913. Reparation for \$1,901.44 on shipments of grain, on account of unreasonable elevator and transfer charges at Milwaukee, Wis.

2807. FERGUSON SAW MILL COMPANY v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL. November 4, 1913. Reparation for \$583.27 on shipments of cypress lumber from Little Rock and Woodson, Ark., to Kansas City, Mo., and other points, on account of excessive rates.

4502. GORDON & FERGUSON ET AL v. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY ET AL. November 4, 1913. Reparation of \$52.91 on shipments of furs and skins from eastern points to St. Paul, Minn., on account of excessive rates.

4730. BLUE GRASS LUMBER COMPANY ET AL v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL. November 4, 1913. Repa-  
28 I. C. C.

ration for \$10.65 on shipments of hardwood lumber from Birmingham and Sanford, Ala., to Trenton, N. J., and New York, N. Y., on account of excessive rates.

4731. **ROBINSON LUMBER, VENEER & BOX COMPANY ET AL. v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.** November 4, 1913. Reparation for \$427.62 on shipments of hardwood lumber from Cates, Ala., to Bayonne, N. J., and other eastern destinations, on account of excessive rates.

5075. **MAJOR v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.** November 4, 1913. Reparation for \$96.20 on shipments of hardwood lumber from Montgomery, Ala., to Mystic Wharf, Mass., and other eastern destinations, on account of excessive rates.

5237. **KANSAS CITY BREWERIES COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.** September 9, 1913. Reparation for \$598.68 on shipments of barley from Minneapolis, Minn., to Kansas City, Mo., on account of excessive rates.

5237 (Sub-No. 1). **KANSAS CITY BREWERIES COMPANY v. CHICAGO GREAT WESTERN RAILROAD COMPANY.** January 5, 1914. Reparation for \$126.33 on shipments of barley from Minneapolis, Minn., to Kansas City, Mo., on account of excessive rates.

5237 (Sub-No. 2). **KANSAS CITY BREWERIES COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.** November 4, 1913. Reparation for \$122.46 on shipments of barley from Minneapolis, Minn., to Kansas City, Mo., on account of excessive rates.

5317. **GILL COMPANY v. OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY ET AL.** November 4, 1913. Reparation for \$211.49 on shipments of addressographs from Chicago, Ill., to Portland, Oreg., on account of excessive rates.

5438. **STANTON COMPANY v. NORTHERN PACIFIC RAILWAY COMPANY ET AL.** November 4, 1913. Reparation for \$2,938.84 on shipments of green salted hides from Spokane, Wash., to Kenosha, Wis., on account of excessive rates.

4284. **MULTNOMAH LUMBER & BOX COMPANY ET AL. v. SOUTHERN PACIFIC COMPANY ET AL.** December 1, 1913. Reparation for \$2,312.34 on shipments of box lumber and box shooks from Portland and Astoria, Oreg., to points in California, on account of excessive rates.

5099. **PEOPLE'S FUEL & SUPPLY COMPANY v. GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.** December 1, 1913. Reparation for \$1,238.91 on shipments of ice from Silver Lake, Wis., to complainant's plant at Chicago, Ill., on account of excessive rates.

5251. **SWANSON ET AL. v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.** December 1, 1913. Reparation for \$107.44 to Axel W. Swanson; \$1,163.64 to N. Nigro & Company; \$1,192.40 to A. A.

Jackson & Company; \$412.62 to Bergman Produce Company; \$479.63 to Harkrider-Keith-Cooke Company; and \$950.64 to C. D. Hartnett Company on shipments of bananas from New Orleans, La., to Texas points, on account of excessive rates.

5339. COOSA LUMBER COMPANY *v.* SOUTHERN RAILWAY COMPANY *ET AL.* December 3, 1913. Reparation for \$83.66 on shipments of lumber from Covin, Ala., to Louisville, Ky., and points north of Ohio River on account of excessive rates.

5299. WOLF & SONS *v.* CENTRAL RAILROAD COMPANY OF NEW JERSEY *ET AL.* January 5, 1914. Reparation for \$123.06 on shipments of ramie waste from Somerville, N. J., to Revere, Mass., on account of excessive rates.

4881. DEEVES LUMBER COMPANY *v.* MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY *ET AL.* January 5, 1914. Reparation for \$203.32 on shipments of crossties from Engadine and Sault Ste. Marie, Mich., to Minnesota Transfer, Minn., destined beyond, on account of excessive rates.

4490. PARTRIDGE & SONS COMPANY *ET AL. v.* PENNSYLVANIA RAILROAD COMPANY *ET AL.* January 5, 1914. Reparation for \$3,191.40 on shipments of chairs from Lewisburg, Pa., to Jersey City, N. J., on account of excessive minimum weight.

5343. JOHNSON *v.* SOUTHERN PACIFIC COMPANY. January 5, 1914. Reparation for \$586.02 on shipments of sheep from Klamath Falls, Oreg., to San Francisco, Cal., on account of excessive rates.

5845. NATIONAL LEAGUE OF COMMISSION MERCHANTS OF THE UNITED STATES *v.* PENNSYLVANIA RAILROAD COMPANY. January 5, 1914. Reparation for \$3,180 to John Nix & Company; \$2,103.48 to Robert T. Cochran & Company; \$803.10 to J. H. Bahrenburg Brother & Company; \$1,342.60 to E. P. Loomis & Company; \$994.02 to Kunz, Marsh & Pendleton; \$893.70 to J. H. Killough & Company; \$985.70 to Smith & Holden; \$573.45 to W. C. Deyo & Brother; \$516.70 to A. F. Young & Company; \$335.96 to Phillips & Sons, Inc.; \$335.15 to Jacob Lippmann; \$269.87 to Olivit Brothers; \$272.10 to Titus Brothers; \$170.40 to Thomas P. Wallace; \$98.50 to L. Casazza & Company; \$53.55 to R. E. Cochran & Company, Inc.; and \$168.85 to Leigh & Everitt, on account of drayage charges collected on shipments of peaches and cantaloupes destined to defendant's piers at New York City, but delivered at Jersey City, N. J.

NOTE.—The amount of reparation awarded in above cases aggregates \$43,421.42.



**ORDERS ISSUED INVOLVING REPARATION ON INFORMAL  
PLEADINGS FOR YEAR ENDING NOVEMBER 30, 1913.**

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For the year ending November 30, 1913, the number of orders issued involving reparation in informal pleadings was 4,610; the number of claims denied or otherwise closed during that period was 1,818; and the amount of reparation awarded was \$349,167.45.

28 L. C. C.

763



## TABLE OF COMMODITIES.

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- Agricultural cultivating implements. Louisville, Ky., Memphis, Tenn., and New Orleans, La. to Carrollton, Ga. 154.
- Ammonia compressors. Kenosha, Wis., to San Francisco, Cal. 439.
- Apples. Memphis, Tenn., to Little Rock, Ark., originating in Pennsylvania and Virginia, 529.
- Ash, soda. Wyandotte, Mich., to Canada, 613.
- Ash, volcanic. Wichita, Kans., to Kansas City, St. Joseph, and St. Louis, Mo., Peoria and Chicago, Ill. 289.
- Automobiles. New York to Portland, Oreg. 412.
- Axles, wooden, wagon. Fayette Junction, Ark., to Huntsville and Austin, Tex. 616.
- Bagging. Baltimore, Md. to Carrollton, Ga. 154.
- Bananas. New Orleans, La. to Amarillo, Tex. 594.
- Barley, elevation allowance at Milwaukee, Wis. 489.
- Baskets, grape, berry, and fruit. California to other states, 247.
- Beams, plow. Fayette Junction, Ark., to Huntsville and Austin, Tex. 616.
- Beans. Florida to Chicago, Ill. 274.
- Beer. Dubuque, Iowa, to East Dubuque, Ill. 425.
- Berries. Utah common points and Colorado, 326.
- Blue vitriol. Kansas City, Mo., to and from Omaha, Nebr. 265.
- Board, box. Boston, Mass., to and from Haverhill, Mass. 336.
- Bolsters, wagon. Fayette Junction, Ark., to Huntsville and Austin, Tex. 616.
- Bonds. New York, N. Y., to Spokane, Wash. 316.
- Brake shoes. Chattanooga, Tenn., weighing charge, 350.
- Brick. Hocking, Shawnee, and Zanesville groups, Ohio, to Huntington, W. Va. 292.
- Brick. Kansas gas belt to Iowa, 285.
- Brooders. Omaha, Nebr., to Memphis, Tenn. 515.
- Broom corn. Colorado common points from various points, 310.
- Brooms. Colorado common points from various points, 310.
- Buggies. Dallas, Tex., to Savannah, Ga. 619.
- Burlap. North Atlantic ports to Memphis, Tenn. 543.
- Butter. Cincinnati, N. Y., to New York, N. Y. 330.

- By-products of grain. Mississippi River to central freight association territory, 549.
- Canned Goods. Baltimore, Md., Louisville, Ky., Memphis, Tenn., and New Orleans, La., to Carrollton, Ga. 154.
- Canned goods. Between Missouri River points, 265 (267).
- Cans, tin. California to other states, 247.
- Cantaloupes. Florida points to points south of the Ohio and Potomac rivers and east of the Mississippi River, 634.
- Carnallite. Western classification, 223.
- Carriers, empty. California to other states, 247.
- Castings, iron. Chattanooga, Tenn., weighing charge, 350.
- Cement. Baltimore, Md., to Carrollton, Ga. 154.
- Cement. Mason City, Iowa, to International Falls, Minn. 477.
- Cereals. Premiums in packages of, 415.
- Champagne. New York to California terminals, 376.
- Cheese. Cincinnati, N. Y., to New York, N. Y. 330.
- Chemicals. Central freight association territory, 372.
- Class rates. Alton, Ill., to Henderson and Owensboro, Ky. 589.
- Class rates. Atlantic seaboard to Colorado and Utah common points, 230.
- Class rates. Baltimore, Md., and related points, to Carrollton, Ga. 154.
- Class rates. Chicago, Ill., to interior Iowa cities. 76.
- Class rates. Cincinnati, Ohio, Louisville, Ky., and other Ohio River crossings, Memphis, Tenn., and New Orleans, La., to Lagrange, Ga. 178.
- Class rates. Cincinnati, Ohio, and other Ohio River crossings, Birmingham, Ala., and Knoxville, Tenn., to Vienna, Ga. 173.
- Class rates. Denver, Colo., to Atlantic seaboard, 82 (90).
- Class rates. Denver and other Colorado common points to Chicago, Ill., Mississippi River cities, and to and from Missouri River cities, 82.
- Class rates. Interior Iowa cities to east of Indiana-Illinois state line, 64.
- Class rates. Interior Iowa cities to west of Missouri River, 193, 563.
- Class rates. Iowa and Minnesota to Pacific coast territory, 1.
- Class rates. Louisville, Ky., and related points, to Carrollton, Ga. 154.
- Class rates. Mississippi River points to Kansas City, 308.
- Class rates. New Orleans, La., to Colorado common points, 82 (90).
- Class rates. Eastern points to Springfield, Ill., 611.
- Class rates. Ohio River crossings, Virginia cities and eastern cities to Montezuma, Ga. 280.
- Class rates. St. Louis & S. F. points to points between Rogers and Siloam Springs, Ark. 640.



- Class rates. Upper Mississippi River crossings in Iowa to and from east of the Indiana-Illinois state line, 47.
- Class and commodity rates. Columbia, S. C., from Potomac, Ohio, and Mississippi River points, 339.
- Class and commodity rates. Douglas, Ga., from points outside of states, 445.
- Class and commodity rates. Meridian, Miss., to Alabama, 360.
- Class and commodity rates. Pelham, Camilla, and Sylvester, Ga., to and from, 433.
- Class and commodity rates. St. Louis and Kansas City, Mo., and Memphis, Tenn., and C. F. A. and W. T. L. territories to Texarkana, Tex. and Texarkana, Ark. 569.
- Class and commodity rates. Trunk line and central freight association territories to Elgin, Ill. 380.
- Coal. Birmingham, Ala., to Douglas, Ga. 445.
- Coal. Birmingham, Ala., to Pelham, Camilla, and Sylvester, Ga. 433.
- Coal. Car distribution. 442.
- Coal. Car distribution, 502.
- Coal. Chicago, Ill., to Ravenswood, Ill. 677.
- Coal. Columbia, S. C., from Alabama, Kentucky and Tennessee, 339.
- Coal. Gallup, N. Mex., to Arizona, 428.
- Coal. Kentucky, Tennessee and Alabama mines to Nashville, Tenn. 533.
- Coal. Kirby district, Wyo., to Montana, North Dakota, Idaho, Washington, and Oregon, 250.
- Coal. Milwaukee, Wis., reconsignment. 645.
- Coal. Rock Springs, Cumberland, and North Kemmerer, Wyo., to Dillon, Mont. 91.
- Coal. Sheridan district, Wyo., to Nebraska and South Dakota, 250.
- Coal. Weighing of, 7 (24).
- Coal. West Virginia and Kentucky to Milwaukee, Manitowoc and Kewaunee, Wis., for beyond, 527.
- Coal, anthracite. Pennsylvania anthracite region to points on New Haven Railroad, 235.
- Coal, bituminous. Tucumcari, N. Mex., to Kansas City, Mo., and other points, 328.
- Coal, bituminous. Virginia and Tennessee to Lebanon, Ky. 301.
- Coconuts. New Orleans, La., to Amarillo, Tex. 594.
- Coffee. New Orleans, La., to St. Louis, Mo. 484.
- Coke. Chattanooga, Tenn., weighing charge, 350.
- Commodity rates. Atlantic seaboard to Colorado and Utah common points, 230.
- Commodity rates. Between Missouri River points, 265.

- Commodity rates. Chicago, Ill., and the Mississippi and Missouri rivers to Colorado common points, 82 (90).
- Commodity rates. Denver, Colo., to Atlantic seaboard, 82 (90).
- Commodity rates. Interior Iowa cities to and from east of Indiana-Illinois state line, 64.
- Commodity rates. Interior Iowa cities to west of Missouri River, 193.
- Commodity rates. Iowa and Minnesota to Pacific coast territory, 1.
- Commodity rates. Ohio and Mississippi River crossings to Lagrange, Ga. 178.
- Commodity rates. Ohio River crossings, Virginia cities and eastern cities to Montezuma, Ga. 280.
- Commodity rates. Upper Mississippi River crossings in Iowa to and from east of the Indiana-Illinois state line, 47.
- Condensers, ammonia. Kenosha, Wis., to San Francisco, Cal. 439.
- Corn. Clinton, Iowa, transit privilege, 364.
- Corn. Iowa to Oklahoma, 462.
- Corn. Omaha, Nebr., Council Bluffs, Iowa, and lower Missouri River cities, to Wisconsin, 602.
- Corn and products. Ohio River crossings to Wilmington, N. C. 383.
- Cotton. Oklahoma to New Orleans, La., for export, 409.
- Cotton goods. Between Mississippi River and Missouri River from New England points, 308.
- Cotton goods. Southern states and Mississippi River to Missouri River cities, 205.
- Cottonseed and products. Pelham, Camilla and Sylvester, Ga., to Jacksonville, Fla., and other points, 433.
- Cottonseed and products. Texas to New Orleans, La. 219.
- Cottonseed products. Wharfage facilities at Galveston, Tex. 584.
- Cream of Rye. Premiums in packages of, 415.
- Cucumbers. Florida to Chicago, Ill. 274.
- Culverts, corrugated iron and steel. Classification, 508.
- Doors. Mississippi River crossings to east of Indiana-Illinois state line, 47 (63).
- Eggplants. Florida to Chicago, Ill. 274.
- Explosives. Central freight association territory, 372.
- Fertilizer. Searsport, Me., to Fort Fairfield and Caribou, Me. 398.
- Flour. Chattanooga, Tenn., to Douglas, Ga. 445.
- Flour. Chattanooga, Tenn., to Pelham, Camilla, and Sylvester, Ga. 433.
- Flour. Louisville, Ky., Memphis, Tenn., and New Orleans, La., to Carrollton, Ga. 154.
- Flour. New Orleans, La. Storage, 605.
- Frames, iron and steel window. Official classification territory to Texarkana, Tex.-Ark., Louisiana, Texas and Mexico, 500.

- Fruits. Florida to south of the Ohio and Potomac rivers and east of the Mississippi River, 634.
- Fruits, citrus. Caloosahatchee River landings to Jacksonville, Fla., for beyond, 356.
- Fruits, deciduous. Utah common points and Colorado, 326.
- Furniture. Kansas City, Mo., to and from St. Joseph, Mo. 265.
- Glucose. Between lower Missouri River crossings, 265.
- Glucose. Chicago, Ill., to St. Joseph, Mo. 673.
- Gluten feed. Mississippi River to central freight association territory, 549.
- Grain. Elevation and transfer of at Milwaukee, Wis., 489.
- Grain. Illinois to Atlantic seaboard, 549 (555).
- Grain. Kansas City, Mo., elevation, 664.
- Grain. Spencer and Manila, Iowa, points between, 354.
- Grain. Weighing of, 7 (21).
- Grain and products. New Orleans, La. Storage, 605.
- Grain and products. Oklahoma from Chicago, Peoria and Mississippi River, 462.
- Grain by-products. Mississippi River crossings to central freight association territory, 549.
- Grain, coarse. Omaha, Nebr., to Oklahoma, 680.
- Grapes. Lodi, Cal., to Minneapolis, Minn., reconsigned to New York, N. Y. 402.
- Grapes. Utah common points and Colorado, 326.
- Hartsalz. Western Classification, 223.
- Hawns, wagon. Fayette Junction, Ark., to Huntsville and Austin, Tex. 616.
- Hay. New Orleans, La. Storage, 605.
- Hounds, see Hawns: wagon-tongue supports.
- Ice. Between upper and lower Missouri River crossings, 265.
- Incubators. Omaha, Nebr., to Memphis, Tenn. 515.
- Iron, pig and scrap. Chattanooga, Tenn., weighing charge, 350.
- Iron, scrap. Chicago, Ill., to and from Milwaukee, Wis. 525.
- Iron, scrap. Duluth and St. Paul, Minn., to Chicago, Ill., and St. Louis, Mo. 467.
- Iron, scrap. Milwaukee, Wis., to Portsmouth, Ohio, 703.
- Iron, special. Louisville, Ky., Memphis, Tenn., and New Orleans, La., to Carrollton, Ga. 154.
- Kainit. Western classification, 223.
- Kegs, empty beer, return of. Western classification and trunk line territories, 688.
- Livestock. Texas, Oklahoma and other territory, 332.
- Lumber. California to points intermediate between California-Nevada state line and Reno, Nev. 313.

- Lumber. Fayette Junction, Ark., to Huntsville and Austin, Tex. 616.
- Lumber. Texas, Louisiana and Arkansas to Oklahoma and Missouri, 471.
- Lumber. Wausau and other Wisconsin points to southern Michigan, 459.
- Lumber. Weighing of, 7 (26).
- Lumber, hardwood. Pine Bluff and Dermott, Ark., to New Orleans, La. 215.
- Machinery, dairy. Syracuse, N. Y., and Trenton, N. J., to Landsdowne, Pa. 406.
- Machinery, refrigerating. Kenosha, Wis., to San Francisco, Cal. 439.
- Malt, Milwaukee, Wis., and Chicago, Ill., to central freight association territory, 549.
- Malt. Elevation and transfer of at Milwaukee, Wis., 489.
- Meats cured. St. Louis and Kansas City, Mo., to Arkansas, 599.
- Meats, fresh. Oklahoma from Omaha, Nebr., and other points, 454.
- Meats, fresh. Texas, Oklahoma, and other territory, 332.
- Melons. Utah common points and Colorado, 326.
- Mixed feed. Mississippi River to central freight association territory, 549.
- Molasses, blackstrap. Mobile, Ala., to East St. Louis, Ill., and St. Louis, Mo. 666.
- Molasses in wood. Memphis, Tenn., and New Orleans, La., to Carrollton, Ga. 154.
- Oil, fuel. Sugar Creek, Mo., to Omaha, Crete, and Grand Island, Nebr. 661.
- Oil, linseed. Between upper and lower Missouri River crossings, 265 (267).
- Oil traps—refrigerating machinery. Kenosha, Wis., to San Francisco, Cal. 439.
- Ore, iron. Philadelphia, Pa., to Island Park, Pa. 608.
- Oysters. Pick-up and delivery service at Baltimore, Md. 244.
- Packages, empty beer, return of, Western trunk line, and classification territories, 680.
- Packing-house products. St. Louis and Kansas City, Mo., to Arkansas, 599.
- Packing-house products. Texas, Oklahoma, and other territory, 332.
- Paint. Central freight association territory, 372.
- Paper, manila. Milwaukee and Manitowoc, Wis., to Kaukauna, Wis. 305.
- Paper, news print. New England to Atlanta, Ga. 186.
- Paper, scrap. Boston, Mass., to and from Haverhill, Mass. 336.
- Peppers. Florida to Chicago, Ill. 274 (277).

- Petroleum. Oil City district, Pa., to St. Louis, Mo., and Quincy, Ill. 47 (62).
- Petroleum and products. Central freight association territory, 372.
- Petroleum and products. Marshalltown, Iowa, to Kansas City, Mo. 707.
- Pineapples. Florida points to points south of the Ohio and Potomac rivers and east of the Mississippi River, 634.
- Pipe and fittings, wrought-iron conduit. Burr Oak, Ill., to Denver, Colo. 418.
- Potash, muriate of. Western classification, 223.
- Potash, sulphate of. Western classification, 223.
- Potatoes, Florida to Chicago, Ill. 274.
- Potatoes, Oklahoma to Colorado, 298.
- Reaches, wagon. Fayette Junction, Ark., to Huntsville and Austin, Tex. 616.
- Receivers, ammonia. Kenosha, Wis., to San Francisco, Cal. 439.
- Rice, clean. Lake Charles, La., to and from Port Arthur, Tex. 697.
- Roofing, prepared. Western classification territory, 610.
- Salt. Duluth, Minn., to south Pacific coast terminals, 1 (6).
- Salt. New York mines to central freight association territory, 38.
- Salt. Salt Mine, La., to Cape Girardeau, Mo., and Sulligent, Ala. 422.
- Salts, manure. Western classification, 223.
- Sash. Mississippi River crossings to east of Indiana-Illinois state line, 47 (63).
- Sash, iron and steel window. Official classification territory to Texarkana, Tex.-Ark., Louisiana, and Mexico, 500.
- Shingles, asphalt. Western classification territory, 610.
- Shot. Advance in minimum, 265.
- Sirup in wood. Memphis, Tenn., and New Orleans, La., to Carrollton, Ga. 154.
- Soap. Between Missouri River crossings, 265.
- Soda, bicarbonate. Wyandotte, Mich., to Canada, 613.
- Soda, caustic. Wyandotte, Mich., to Canada, 613.
- Spoons, premium in packages of cereal products. Belle Plain, Minn., to points in Western and Official classification territories, 415.
- Squash. Florida to Chicago, Ill. 274.
- Stocks. New York, N. Y., to Spokane, Wash. 316.
- Stone, building, curbing, or paving. Banning and Sandstone, Minn., to Kansas City, Mo., and other Mississippi River points, 269.
- Sugar. Baltimore, Md., to Carrollton, Ga. 154.
- Sugar in barrels or hogsheads. Memphis, Tenn., and New Orleans, La., to Carrollton, Ga. 154.
- Sylvinite. Western classification, 223.
- Ties, hewn oak. Catron, Mo., to Chicago, Ill. 701.

- Tile, roofing. Order notify shipments, 693.
- Tomatoes. Florida to Chicago, Ill. 274.
- Tongues, wagon. Fayette Junction, Ark., to Huntsville and Austin, Tex. 616.
- Tubs, wooden lard. Tacoma, Wash., to Chicago, Ill., and other eastern points, 237.
- Varnishes. Central freight association territory, 372.
- Vegetables. Florida to Chicago, Ill. 274.
- Vegetables. Florida to south of the Ohio and Potomac rivers and east of the Mississippi River, 634.
- Vegetables. Utah common points and Colorado, 326.
- Volco. Wichita, Kans., to Kansas City, St. Joseph, and St. Louis, Mo., Peoria and Chicago, Ill. 289.
- Wheat. Omaha, Nebr., to Oklahoma, 680.
- Wheat. Omaha, Nebr., etc., to Wisconsin, 602.
- Wheat. Spencer and Manila, Iowa, points between, 354.
- Wood, wagon. Fayette Junction, Ark., to Huntsville and Austin, Tex. 616.
- Wool. Lawrence, Mass., to Lewiston, Me. 396.

## TABLE OF LOCALITIES.

---

- Abbotsford, Wis., from Omaha, Nebr., and other points. Wheat and corn, 602.
- Alabama from Meridian, Miss. Class and commodity rates, 360.
- Alabama mines to Columbia, S. C. Coal, 339.
- Alabama mines to Nashville, Tenn. Coal, 533.
- Alabama to Missouri River cities. Cotton piece goods, 205.
- Albuquerque, N. Mex., from interior Iowa cities. Class and commodity rates, 193 (196).
- Alton, Ill., to Henderson and Owensboro, Ky. Class rates, 589.
- Amarillo, Tex., from New Orleans, La. Bananas and coconuts, 594.
- Arch Creek, Fla., to Chicago, Ill. Potatoes, 274.
- Arizona from Gallup, N. Mex. Coal, 428.
- Arkansas from St. Louis and Kansas City, Mo. Cured meats and packing-house products, 599.
- Arkansas to Kansas, Oklahoma and Missouri. Lumber, 471.
- Atchison, Kans., from Tucumcari, N. Mex. Coal, 328.
- Atchison, Kans., to points on O. S. L. Through routes, 518.
- Atlanta, Ga., from Bellows Falls, Vt., Franklin and Berlin, N. H., and Fort Edward and Brownsville, N. Y. News print paper, 186.
- Atlantic seaboard to and from Denver, Colo. Class and commodity rates, 82 (90).
- Atlantic seaboard from Illinois. Grain, 549 (555).
- Atlantic seaboard to Colorado and Utah common points. Class and commodity rates, 230.
- Atlantic seaboard to and from Upper Mississippi River crossings. Class and commodity rates, 47.
- Austin, Tex., from Fayette Junction, Ark. Wagon wood, 616.
- Baltimore, Md. Pick-up and delivery service. Oysters, 244.
- Baltimore, Md., to Carrollton, Ga. Class rates, bagging, canned goods, sugar, and cement, 154.
- Banning, Minn., to Kansas City, Mo., and other Missouri River points. Building stone, 269.
- Belle Plaine, Minn., to western and official classification territories. Premiums in packages of cereals, 415.
- Bellows Falls, Vt., to Atlanta Ga. News print paper, 186.
- Belmont, Mo., to Montezuma, Ga. Class and commodity rates, 280.
- 28 I. C. C.

- Benton Harbor, Mich., from Wausau and other Wisconsin points.  
Lumber, 459.
- Berlin, N. H., to Atlanta, Ga. News print paper, 186.
- Big Stone Gap, Va., to Lebanon, Ky. Bituminous coal, 301.
- Billings, Mont., points east and west of from Sheridan, Wyo. Coal,  
250.
- Birmingham, Ala., to Douglas, Ga. Coal, 445.
- Birmingham, Ala., from Pelham, Camilla, and Sylvester, Ga. Class  
and commodity rates, 433.
- Birmingham, Ala., to Vienna, Ga. Class rates, 173.
- Boston, Mass., from Pennsylvania. Anthracite coal, 235.
- Boston, Mass., to and from Haverhill, Mass., via Windham, N. H.  
Box board and scrap paper, 336.
- Boston, Mass., to Memphis, Tenn. Burlap, 543.
- Boston, Mass., to Montezuma, Ga. Class and commodity rates, 280.
- Boylston Street, Mass., from Pennsylvania. Anthracite coal, 235.
- Boynton, Fla., to Chicago, Ill. Vegetables, 274.
- Brownville, N. Y., to Atlanta, Ga. News print paper, 186.
- Bucklin from Dumas, Mo., inclusive, from Texas, Louisiana, and  
Arkansas. Lumber, 471.
- Burlington, Iowa, to and from east of Indiana-Illinois state line.  
Class and commodity rates, 47.
- Burlington, Iowa, to points on O. S. L. via Atchison, Kans. Through  
routes, 518.
- Burr Oak, Ill., to Denver, Colo. Pipe and fittings, 418.
- Butte, Mont., from Chicago and other points to points on O. S. L.  
Through routes, 518.
- Cairo, Ill., to Montezuma, Ga. Class and commodity rates, 280.
- California-Nevada state line from California. Lumber, 313.
- California terminals from New York. Champagne, 376.
- California to other states. Tin cans and other commodities, 247.
- Caloosahatchee River landings to Jacksonville, Fla., for beyond.  
Citrus fruits, 356.
- Camilla, Ga., to and from. Class and commodity rates, 433.
- Canada from Wyandotte, Mich. Soda ash, etc., 613.
- Cape Girardeau, Mo., from Salt Mine, La. Salt, 422.
- Caribou, Me., from Searsport, Me. Fertilizer, 398.
- Carnegie, Pa., to and from Chester, W. Va. Excursion fares, 122.
- Carolina territory to Missouri River cities. Cotton piece goods, 205.
- Carrollton, Ga., from Baltimore, Md. Class rates, bagging, canned  
goods, sugar, and cement, 154.
- Carrollton, Ga., from Louisville, Ky., and related points. Class  
rates, 154.



- Carrollton, Ga., from Louisville, Ky., to Memphis, Tenn., and New Orleans, La. Agricultural implements, canned goods, flour, and special iron, 154.
- Carrollton, Ga., from Memphis, Tenn., and New Orleans, La. Sugar, sirup, and molasses, 154.
- Catron, Mo., to Chicago, Ill. Hewn oak ties, 701.
- Cedar Rapids, Iowa, to and from Chicago, Ill. Class rates, 76.
- Central freight association territory. Explosives and other dangerous articles, storage, 372.
- Central freight association territory from Chicago, Milwaukee, and Mississippi River. Grain by-products and malt, 549.
- Central freight association territory to Elgin, Ill. Class and commodity rates, 380.
- Central freight association territory to Missouri River cities. Cotton piece goods, 205.
- Central freight association territory from New York mines. Salt, 38.
- Central freight association territory to Texarkana, Ark.-Tex. Class and commodity rates, 569.
- Central freight association territory to and from upper Mississippi River crossings. Class and commodity rates, 47.
- Chambersburg, Pa., to Little Rock, Ark., via Memphis, Tenn. Apples, 529.
- Chattanooga, Tenn., to Douglas, Ga. Flour, 445.
- Chattanooga, Tenn., from Pelham, Camilla, and Sylvester, Ga. Class and commodity rates, 433.
- Chattanooga, Tenn. Weighing charge, 350.
- Chester, W. Va., to and from Carnegie, Pa. Excursion fares, 122.
- Chicago, Ill., from Catron, Mo. Hewn oak ties, 701.
- Chicago, Ill. Lighterage charges, 390.
- Chicago, Ill., to and from Denver and other Colorado common points. Class rates, 82.
- Chicago, Ill., from Duluth and St. Paul, Minn. Scrap iron, 467.
- Chicago, Ill., from Florida. Vegetables, 274.
- Chicago, Ill., from New York mines. Salt, 38.
- Chicago, Ill., from Tacoma, Wash. Wooden lard tubs, 237.
- Chicago, Ill., from Wichita, Kans. Volco, 289.
- Chicago, Ill., to and from Cedar Rapids and Fort Dodge, Iowa. Class rates, 76 (79).
- Chicago, Ill., to and from Iowa cities. Class rates, 47 (76).
- Chicago, Ill., to and from Milwaukee, Wis. Scrap iron, 525.
- Chicago, Ill., to central freight association territory. Malt, 549.
- Chicago, Ill., to Colorado common points. Brooms, 310.
- Chicago, Ill., to Colorado common points. Commodity rates, 82 (90).

- Chicago, Ill., to Oklahoma. Grain and products, 462.
- Chicago, Ill., to points on O. S. L. via Butte, Mont. Through routes, 518.
- Chicago, Ill., to Ravenswood, Ill. Coal, 677.
- Chicago, Ill., to St. Joseph, Mo. Glucose, 673.
- Chicago, Ill., to Wilmington, N. C. Corn and products, 383.
- Cincinnati, Ohio, to Lagrange, Ga. Class rates, 178.
- Cincinnati, Ohio, to Montezuma, Ga. Class and commodity rates, 280.
- Cincinnati, Ohio, to Vienna, Ga. Class rates, 173.
- Cincinnati, Ohio, to Wilmington, N. C. Corn and products, 383.
- Cincinnati, N. Y., to New York, N. Y. Butter and cheese, 330.
- Clarkson, Nebr., from Sheridan, Wyo. Coal, 250.
- Clinton, Iowa. Corn, transit privileges, 364.
- Clinton, Iowa, to and from east of Indiana-Illinois state line. Class and commodity rates, 47.
- Clinton, Iowa, to points on O. S. L. via Atchison, Kans. Through routes, 518.
- Colby, Wis., from Omaha, Nebr., and other points. Wheat and corn, 602.
- Colfax, Cal., to points intermediate between California-Nevada state line and Reno, Nev. Lumber, 313.
- Colorado. Coal car distribution, 502.
- Colorado and Utah common points. Fruits and vegetables, 326.
- Colorado common points from Atlantic seaboard. Class and commodity rates, 230.
- Colorado common points from Chicago, Ill., and the Mississippi and Missouri rivers. Commodity rates, 82 (90).
- Colorado common points from interior Iowa cities. Class and commodity rates, 193 (199).
- Colorado common points from New Orleans, La. Class rates, 82 (90).
- Colorado common points from various points. Brooms, 310.
- Colorado common points to Chicago, Ill., Mississippi River cities, and to and from Missouri River cities. Class rates, 82.
- Colorado and Oklahoma. Potatoes, 298.
- Columbia, S. C., from Alabama, Kentucky and Tennessee mines. Coal, 339.
- Columbia, S. C., from points on and north of Potomac River, and points on and beyond Ohio and Mississippi rivers. Class and commodity rates, 339.
- Conneaut Lake, Pa., to and from Youngstown, Ohio. Excursion fares, 122.
- Cortland Junction, N. Y., to New York, N. Y. Butter and cheese, 330.

- Cotula, Tenn., to Lebanon, Ky. Bituminous coal, 301.
- Council Bluffs, Iowa. Grain elevators, 664.
- Council Bluffs, Iowa, to Oklahoma. Corn, 462.
- Council Bluffs, Iowa, to Wisconsin. Corn and wheat, 602.
- Crawford, Nebr., from Sheridan, Wyo. Coal, 250.
- Crete, Nebr., from Sugar Creek, Mo. Fuel oil, 661.
- Cumberland, Wyo., to Dillon, Mont. Coal, 91.
- Dakota Junction, Nebr., from Sheridan, Wyo. Coal, 250.
- Dallas, Tex., to Savannah, Ga. Buggies, 619.
- Dania, Fla., to Chicago, Ill. Potatoes, 274.
- Davenport, Iowa, to and from east of Indiana-Illinois state line.  
Class and commodity rates, 47.
- Deerfield, Fla., to Chicago, Ill. Potatoes, 274.
- Denver, Colo., from Burr Oak, Ill. Pipe and fittings, 418.
- Denver, Colo., to and from Atlantic seaboard. Class and commodity rates, 82 (90).
- Denver, Colo., to and from Chicago, Ill., Mississippi River cities, and to and from Missouri River cities. Class rates, 82.
- Denver, Colo., from Shawnee, Okla. Potatoes, 298.
- Dermott, Ark., to New Orleans, La. Hardwood lumber, 215.
- Des Moines, Iowa, to Oklahoma. Corn, 462.
- Detroit, Mich. Switching charges, 494.
- Dillon, Mont., from Rock Springs, Cumberland, and North Kemmerer, Wyo. Coal, 91.
- Douglas, Ga., from points outside of state. Class and commodity rates, 445.
- Dubuque, Iowa, to and from east of Indiana-Illinois state line.  
Class and commodity rates, 47.
- Dubuque, Iowa, to East Dubuque, Ill. Beer, 425.
- Duluth, Minn., to Chicago, Ill., and St. Louis, Mo. Scrap iron, 467.
- Duluth, Minn., to points on O. S. L. via Butte, Mont. Through routes, 518.
- Duluth, Minn., to south Pacific coast terminals. Salt, 1 (6).
- Dumas to Bucklin, Mo., inclusive from Texas, Louisiana, and Arkansas. Lumber, 471.
- East Dubuque, Ill., from Dubuque, Iowa. Beer, 425.
- East Dubuque, Ill., to Missouri River cities. Cotton piece goods, 205.
- East St. Louis, Ill., from Tacoma, Wash. Wooden lard tubs, 237.
- East St. Louis, Ill., from Mobile, Ala. Blackstrap molasses, 666.
- East St. Louis, Ill., to Oklahoma. Fresh meats, 454.
- Eastern cities, to Douglas, Ga. Class and commodity rates, 445.
- Eastern cities to Montezuma, Ga. Class and commodity rates, 280.
- Eastern points to and from Springfield, Ill. Percentage rates, 511.
- Eau Claire, Wis., to southern Michigan. Lumber, 459.

- Elgin, Ill., from trunk line and central freight association territories. Class and commodity rates, 380.
- Elgin, Nebr., from Sheridan, Wyo. Coal, 250.
- Evansville, Ind., to Montezuma, Ga. Class and commodity rates, 280.
- Fayette Junction, Ark., to Huntsville and Austin, Tex. Wagon wood, 616.
- Florida to Chicago, Ill. Vegetables, 274.
- Florida to south of the Ohio and Potomac rivers and east of the Mississippi River. Fruits and vegetables, 634.
- Forest Hills, Mass., from Pennsylvania. Anthracite coal, 235.
- Fort Dodge, Iowa, to and from Chicago, Ill. Class rates, 76 (79).
- Fort Edward, N. Y., to Atlanta, Ga. News print paper, 186.
- Fort Fairfield, Me., from Searsport, Me. Fertilizer, 398.
- Fort Lauderdale, Fla., to Chicago, Ill. Potatoes, 274.
- Fort Madison, Iowa, to and from east of Indiana-Illinois state line. Class and commodity rates, 47.
- Fort Worth, Tex., from Tacoma, Wash. Wooden lard tubs, 237.
- Franklin, N. H., to Atlanta, Ga. News print paper, 186.
- Fremont, Nebr., from Sheridan, Wyo. Coal, 250.
- Fulford, Fla., to Chicago, Ill. Vegetables, 274.
- Gallup, N. Mex., to Arizona. Coal, 428.
- Galveston, Tex. Wharfage facilities on cottonseed products, 584.
- Georgia to Missouri River cities. Cotton piece goods, 205.
- Gold Run, Cal., to points intermediate between California-Nevada state line and Reno, Nev. Lumber, 313.
- Grand Island, Nebr., from Sugar Creek, Mo. Fuel oil, 661.
- Guernsey County, Ohio. Coal car distribution, 442.
- Habersham, Tenn., to Lebanon, Ky. Bituminous coal, 301.
- Hannibal, Mo., to and from east of Indiana-Illinois state line. Class and commodity rates, 47.
- Hastings, Nebr., from Sheridan, Wyo. Coal, 250.
- Haverhill, Mass., to and from Boston, Mass., via Windham, N. H. Box board and scrap paper, 336.
- Henderson, Ky., from Alton, Ill. Class rates, 589.
- Hocking group, Ohio, to Huntington, W. Va. Brick, 292.
- Huntington, W. Va., from Hocking, Shawnee, and Zanesville group, Ohio. Brick, 292.
- Huntsville, Tex., from Fayette Junction, Ark. Wagon wood, 616.
- Idaho from Kirby district, Wyo. Coal, 250.
- Illinois-Indiana state line to and from interior Iowa cities. Class and commodity rates, 64.
- Illinois-Indiana state line to and from upper Mississippi River crossings. Class and commodity rates, 47.

- Illinois to Atlantic seaboard. Grain, 549 (555).  
Indiana-Illinois state line to and from upper Mississippi River crossings. Class and commodity rates, 47.  
Indiana-Illinois state line (east of) to Missouri River cities. Cotton piece goods, 205.  
International Falls, Minn., from Mason City, Iowa. Cement, 477.  
Iowa from Kansas. Brick, 285.  
Iowa (cities on Mississippi River) to and from east of Indiana-Illinois state line. Class and commodity rates, 47.  
Iowa City, Iowa, from east of Indiana-Illinois state line. Class and commodity rates, 64.  
Iowa (interior cities) to and from Chicago, Ill. Class rates, 76.  
Iowa (interior cities) to and from east of Indiana-Illinois state line. Class and commodity rates, 64.  
Iowa (interior cities) to west of Missouri River. Class and commodity rates, 193; 563.  
Iowa to Pacific coast territory. Class and commodity rates, 1.  
Island Park, Pa., from Philadelphia, Pa. Iron ore, 608.  
Jacksonville, Fla., for beyond from Caloosahatchee River landings. Citrous fruits, 356.  
Jacksonville, Fla., from Pelham, Camilla, and Sylvester, Ga. Class and commodity rates, 433.  
Jellico, Tenn., to Lebanon, Ky. Bituminous coal, 301.  
Kansas City, Kans., from Tacoma, Wash. Wooden lard tubs, 237.  
Kansas City, Mo., from Banning and Sandstone, Minn. Building stone, 269.  
Kansas City, Mo., from Marshalltown, Iowa. Petroleum and products, 707.  
Kansas City, Mo., from Mississippi River crossings. Cotton piece goods, 205.  
Kansas City, Mo., from Mississippi River points. Class rates, 308.  
Kansas City, Mo., from Tucumcari, N. Mex. Coal, 328.  
Kansas City, Mo., from Wichita, Kans. Volco, 289.  
Kansas City, Mo. Grain elevation, 664.  
Kansas City, Mo., to and from Omaha, Nebr., and St. Joseph, Mo. Furniture and blue vitriol, 265.  
Kansas City, Mo., to Arkansas. Cured meats and packing-house products, 599.  
Kansas City, Mo., to Oklahoma. Grain and products, 462.  
Kansas City, Mo., to points on O. S. L. via Atchison, Kans. Through routes, 518.  
Kansas City, Mo., to Texarkana, Ark.-Tex. Class and commodity rates, 569.  
28 L. C. C.

- Kansas from interior Iowa cities. Class and commodity rates, 193 (202), 563.
- Kansas from Texas, Louisiana and Arkansas. Lumber, 471.
- Kansas to Iowa. Brick, 285.
- Kaukauna, Wis., from Milwaukee and Manitowoc, Wis. Manila paper, 305.
- Kennard, Nebr., from Sheridan, Wyo. Coal, 250.
- Kenosha, Wis., to San Francisco, Cal. Refrigerating machinery, 439.
- Kentucky mines to Columbia, S. C. Coal, 339.
- Kentucky mines to Nashville, Tenn. Coal, 533.
- Kentucky to Milwaukee, Manitowoc, and Kewaunee, Wis., for beyond. Coal, 527.
- Keokuk, Iowa, to and from east of Indiana-Illinois State line. Class and commodity rates, 47.
- Kewaunee, Wis., from West Virginia and Kentucky. Coal, 527.
- Kirby district, Wyo., to Montana, North Dakota, Idaho, Washington, and Oregon. Coal, 250.
- Knoxville, Tenn., to Vienna, Ga. Class rates, 173.
- Lagrange, Ga., from Cincinnati, Ohio, Louisville, Ky., and other Ohio River crossings, Memphis, Tenn., New Orleans, La., and other Mississippi River crossings. Class and commodity rates, 178.
- Lake Charles, La., to and from Port Arthur, Tex. Clean rice, 697.
- Lansdowne, Pa., from Syracuse, N. Y., and Trenton, N. J. Dairy machinery, 406.
- Lawrence, Mass., to Lewiston, Me. Wool, 396.
- Leavenworth, Kans., to points on O. S. L. via Atchison, Kans. Through routes, 518.
- Lebanon, Ky., from Virginia and Tennessee. Bituminous coal, 301.
- Lemon City, Fla., to Chicago, Ill. Potatoes, 274.
- Lewiston, Me., from Lawrence, Mass. Wool, 396.
- Lincoln, Nebr., from Sheridan, Wyo. Coal, 250.
- Lincoln, Nebr., from Tucumcari, N. Mex. Coal, 328.
- Linwood, Nebr., from Sheridan, Wyo. Coal, 250.
- Little River, Fla., to Chicago, Ill. Potatoes, 274.
- Little Rock, Ark., from Memphis, Tenn., originating in Pennsylvania and Virginia. Apples, 529.
- Lodi, Cal., to Minneapolis, Minn., reconsigned to New York, N. Y. Grapes, 402.
- Louisiana from official classification territory. Iron and steel window frames and sash, 500.
- Louisiana to Kansas, Oklahoma, and Missouri. Lumber, 471.
- Louisiana, Mo., to and from east of Indiana-Illinois state line. Class and commodity rates, 47.
- Louisville, Ky., to Carrollton, Ga. Class rates, Agricultural implements, canned goods, flour, and special iron, 154.

- Louisville, Ky., to Lagrange, Ga. Class rates, 178.  
Louisville, Ky., to Montezuma, Ga. Class and commodity rates, 280.  
Lynchburg, Va., to Montezuma, Ga. Class and commodity rates, 280.  
Manila and Spencer, Iowa, points between. Grain, 354.  
Manitowoc, Wis., from West Virginia and Kentucky. Coal, 527.  
Manitowoc, Wis., to Kaukauna, Wis. Manila paper, 305.  
Manitowoc, Wis., to points on O. S. L. via Butte, Mont. Through routes, 518.  
Mann, Wis., from Omaha, Nebr., and other points. Wheat and corn, 602.  
Marshalltown, Iowa, to Kansas City, Mo. Petroleum and products, 707.  
Mason City, Iowa, to International Falls, Minn. Cement, 477.  
Memphis, Tenn., from North Atlantic ports. Burlap, 543.  
Memphis, Tenn., from Omaha, Nebr. Incubators and brooders, 515.  
Memphis, Tenn., to Carrollton, Ga. Agricultural implements, canned goods, flour, special iron, sugar, sirup, and molasses, 154.  
Memphis, Tenn., to Colorado common points. Brooms, 310.  
Memphis, Tenn., to Lagrange, Ga. Class and commodity rates, 178.  
Memphis, Tenn., to Little Rock, originating in Pennsylvania and Virginia. Apples, 529.  
Memphis, Tenn., to Texarkana, Ark.-Tex. Class and commodity rates, 569.  
Meridian, Miss., to Alabama. Class and commodity rates, 360.  
Mexico from official classification territory. Iron and steel window frames and sash, 500.  
Miami, Fla., to Chicago, Ill. Potatoes, 274.  
Michigan from Wausau and other Wisconsin points. Lumber, 459.  
Middle Creek, S. Dak., from Sheridan, Wyo. Coal, 250.  
Milwaukee, Wis. Coal, reconsignment, 645.  
Milwaukee, Wis. Elevation allowance on barley, 489.  
Milwaukee, Wis., to and from Chicago, Ill. Scrap iron, 525.  
Milwaukee, Wis., from West Virginia and Kentucky. Coal, 527.  
Milwaukee, Wis., to central freight association territory. Malt, 549.  
Milwaukee, Wis., to Kaukauna, Wis. Manila paper, 305.  
Milwaukee, Wis., to points on O. S. L. via Butte, Mont. Through routes, 518.  
Milwaukee, Wis., to Portsmouth, Ohio. Scrap iron, 703.  
Minneapolis, Minn., from Lodi, Cal., reconsigned to New York, N. Y. Grapes, 402.  
Minnesota to Pacific coast territory. Class and commodity rates, 1.  
Mississippi River cities from Denver and other Colorado common points. Class rates, 82.  
28 I. C. C.

- Mississippi River crossings in Iowa (upper) to and from east of Indiana-Illinois state line. Class and commodity rates, 47.
- Mississippi River crossings in Iowa to interior Iowa cities. Class and commodity rates, 64.
- Mississippi River crossings to Lagrange, Ga. Class and commodity rates, 176.
- Mississippi River crossings to Missouri River cities. Cotton piece goods, 205.
- Mississippi River, east of, from Florida. Fruits and vegetables, 634.
- Mississippi River, east of, and south of Ohio and Potomac rivers. Mileage coupons on trains, 318.
- Mississippi River from central freight association territory. Grain by-products and malt, 549.
- Mississippi River, points on and beyond to Columbia, S. C. Class and commodity rates, 339.
- Mississippi River points to Colorado common points. Brooms, 310.
- Mississippi River points to Douglas, Ga. Class and commodity rates, 445.
- Mississippi River points to Kansas City. Cotton piece goods, 308.
- Mississippi River to Colorado common points. Commodity rates, 82 (90).
- Mississippi River to Oklahoma. Grain and products, 462.
- Mississippi River territory from Kansas. Brick, 285.
- Missouri from Texas, Louisiana, and Arkansas. Lumber, 471.
- Missouri River cities to Wisconsin. Corn and wheat, 602.
- Missouri River crossings, points between. Commodity rates, 265.
- Missouri River from Alabama, Georgia, North Carolina, South Carolina, and Tennessee. Cotton piece goods, 205.
- Missouri River from east of Indiana-Illinois state line. Cotton piece goods, 205.
- Missouri River (west of) from interior Iowa cities. Class and commodity rates, 193; 563.
- Missouri River from Mississippi River crossings. Cotton piece goods, 205.
- Missouri River from Mississippi River. Cotton goods, 308.
- Missouri River from Sandstone and Banning, Minn. Building stone, 269.
- Missouri River points to Colorado common points. Brooms, 310.
- Missouri River to and from Chicago, Ill. Class rates, 76.
- Missouri River to and from Denver and other Colorado common points. Class rates, 82.
- Missouri River to Colorado common points. Commodity rates, 82 (90).
- Missouri Valley, Iowa, from Sheridan, Wyo. Coal, 250.



- Mobile, Ala., to Douglas, Ga. Class and commodity rates, 445.
- Mobile, Ala., to East St. Louis, Ill., and St. Louis, Mo. Blackstrap molasses, 666.
- Montana from Kirby district, Wyo. Coal, 250.
- Montezuma, Ga., from Ohio River crossings, Virginia cities and eastern cities. Class and commodity rates, 280.
- Montgomery, Ala., from Pelham, Camilla, and Sylvester, Ga. Class and commodity rates, 433.
- Mount Alto, Pa., to Little Rock, Ark., via Memphis, Tenn. Apples, 529.
- Mount Hope, Mass., from Pennsylvania. Anthracite coal, 235.
- Muscatine, Iowa, to and from east of Indiana-Illinois state line. Class and commodity rates, 47.
- Muskogee, Okla., concentration of cotton, 409.
- Nashville, Tenn., from Kentucky, Alabama, and Tennessee mines. Coal, 533.
- Nashville, Tenn., from Pelham, Camilla, and Sylvester, Ga. Class and commodity rates, 433.
- Nashville, Tenn. Interline switching, 533.
- Nashville, Tenn., to Douglas, Ga. Class and commodity rates, 445.
- Nebraska from points east and west of Billings, Mont. Coal, 250.
- Nebraska from interior Iowa cities. Class and commodity rates, 193 (202).
- Nebraska from Sheridan, Wyo. Coal, 250.
- Needham, Mass., from Pennsylvania. Anthracite coal, 235.
- Needham Heights, Mass., from Pennsylvania. Anthracite coal, 235.
- New England to Atlanta, Ga. News print paper, 186.
- New England to Mississippi and Missouri river points. Cotton goods, 205; 308.
- New England Mills, Cal., to points intermediate between California-Nevada state line and Reno, Nev. Lumber, 313.
- New Mexico from interior Iowa cities. Class and commodity rates, 193 (196).
- New Orleans, La. Storage of freight, 605.
- New Orleans, La., to Amarillo, Tex. Bananas and coconuts, 594.
- New Orleans, La., to Carrollton, Ga. Agricultural implements, canned goods, flour, special iron, sugar, sirup, and molasses, 154.
- New Orleans, La., to Colorado common points. Class rates, 82 (90).
- New Orleans, La., to Douglas, Ga. Class and commodity rates, 445.
- New Orleans, La., to Lagrange, Ga. Class and commodity rates, 178.
- New Orleans, La., to St. Louis, Mo. Coffee, 484.
- New Orleans, La., from Oklahoma. Cotton, 409.
- New Orleans, La., from Pine Bluff and Dermott, Ark. Hardwood lumber, 215.
- 23 I. C. C.

- New Orleans, La., from Texas. Cottonseed and products, 219.
- New York, N. Y., from Cincinnati and Cortlandt Junction, N. Y. Butter and cheese, 330.
- New York, N. Y., from Lodi, Cal., reconsigned at Minneapolis, Minn. Grapes, 402.
- New York, N. Y., to and from upper Mississippi River crossings. Class and commodity rates, 47.
- New York mines to consuming points throughout central freight association territory. Salt, 38.
- New York to California terminals. Champagne, 376.
- New York, N. Y., to Memphis, Tenn. Burlap, 543.
- New York, N. Y., to Montezuma, Ga. Class and commodity rates, 280.
- New York to Portland, Oreg. Automobiles, 412.
- New York, N. Y., to Spokane, Wash. Stocks and bonds, 316.
- Newcastle, Cal., to points intermediate between California-Nevada State line and Reno, Nev. Lumber, 313.
- Newell, S. Dak., from Sheridan, Wyo. Coal, 250.
- Newport News, Va., to Memphis, Tenn. Burlap, 543.
- Newton Upper Falls, Mass., from Pennsylvania. Anthracite Coal, 235.
- Norfolk Junction, Nebr., from Sheridan, Wyo. Coal, 250.
- Norfolk, Va., to Memphis, Tenn. Burlap, 543.
- Norfolk, Va., to Montezuma, Ga. Class and commodity rates, 280.
- North Atlantic ports to Memphis, Tenn. Burlap, 543.
- North Carolina to Missouri River cities. Cotton piece goods, 205.
- North Dakota from Kirby district, Wyo. Coal, 250.
- North Kemmerer, Wyo., to Dillon, Mont. Coal, 91.
- Norton, Va., to Lebanon, Ky. Bituminous coal, 301.
- Official classification territory from Belle Plaine, Minn. Premiums in packages of cereals, 415.
- Official classification territory to Texarkana, Tex.-Ark., Louisiana, Texas, and Mexico. Iron and steel window frames and sash, 500.
- Ohio to Huntington, W. Va. Bricks, 292.
- Ohio River, points on and beyond to Columbia, S. C. Class and commodity rates, 339.
- Ohio River, south of and east of Mississippi River. Mileage coupons on trains, 318.
- Ohio River, south of, from Florida. Fruits and vegetables, 634.
- Ohio River crossings to Lagrange, Ga. Class and commodity rates, 178.
- Ohio River crossings to Montezuma, Ga. Class and commodity rates, 280.
- Ohio River crossings to Pelham, Camilla, and Sylvester, Ga. Class and commodity rates, 433.

- Ohio River crossings to Vienna, Ga. Class rates, 173.
- Ohio River crossings to Wilmington, N. C. Corn and products, 383.
- Ohio River gateways to Douglas, Ga. Class and commodity rates, 445.
- Oklahoma from Chicago, Peoria, Mississippi River and Iowa. Grain and products, 462.
- Oklahoma from Omaha, Nebr. Coarse grain and wheat, 462; 680.
- Oklahoma from Omaha, Nebr., and other points. Fresh meats, 454.
- Oklahoma from Texas, Louisiana, and Arkansas. Lumber, 471.
- Oklahoma to Colorado. Potatoes, 298.
- Oklahoma to New Orleans, La., for export. Cotton, 409.
- Oklahoma, Texas, and other territory. Live stock, etc. 332.
- Oklahoma City, Okla., to Colorado. Potatoes, 298.
- Oklahoma City, Okla., to Colorado common points. Brooms, 310.
- Oklahoma City, Okla., from Tacoma, Wash. Wooden lard tubs, 237.
- Omaha, Nebr. Grain elevators, 664.
- Omaha, Nebr., to and from Kansas City and St. Joseph, Mo. Blue vitriol and furniture, 265.
- Omaha, Nebr., to Memphis, Tenn. Incubators and brooders, 515.
- Omaha, Nebr., to Oklahoma. Fresh meats, 454.
- Omaha, Nebr., to Oklahoma. Grain and products, 462.
- Omaha, Nebr., to Oklahoma. Coarse grain and wheat, 680.
- Omaha, Nebr., from Sandstone and Banning, Minn. Building stone, 269.
- Omaha, Nebr., from Sheridan, Wyo. Coal, 250.
- Omaha, Nebr., from Sugar Creek, Mo. Fuel Oil, 661.
- Omaha, Nebr., from Tacoma, Wash. Wooden lard tubs, 237.
- Omaha, Nebr., from Tucumcari, N. Mex. Coal, 328.
- Omaha, Nebr., to Wisconsin. Corn and wheat, 602.
- Oregon from Kirby district, Wyo. Coal, 250.
- Oregon Short Line points from Chicago and other points via Butte, Mont. Through routes, 518.
- Owen to Tulsa, Okla., inclusive from Texas, Louisiana and Arkansas. Lumber, 471.
- Owensboro, Ky., from Alton, Ill. Class rates, 589.
- Pacific coast terminals, south, from Duluth, Minn. Salt, 1 (6).
- Pacific coast territory, from Iowa and Minnesota. Class and commodity rates, 1.
- Paducah, Ky., to Montezuma, Ga. Class and commodity rates, 280.
- Pelham, Ga., to and from. Class and commodity rates, 433.
- Pennsylvania anthracite region to Massachusetts points. Anthracite coal, 235.
- Pensacola, Fla., to Douglas, Ga. Class and commodity rates, 445.
- Peoria, Ill., to Colorado common points. Brooms, 310.
- Peoria, Ill., to and from Iowa. Class and commodity rates, 47.

- Peoria, Ill., to and from interior Iowa cities. Class and commodity rates, 76.
- Peoria, Ill., to Oklahoma. Grain and products, 462.
- Peoria, Ill., from Wichita, Kans. Volcoo, 289.
- Peoria territory from Kansas. Brick, 285.
- Petersburg, Va., to Montezuma, Ga. Class and commodity rates, 280.
- Philadelphia, Pa., to Island Park, Pa. Iron Ore, 608.
- Philadelphia, Pa., to Memphis, Tenn. Burlap, 543.
- Philadelphia, Pa. to Montezuma, Ga. Class and commodity rates, 280.
- Phoenix, Ariz., from interior Iowa cities. Class and commodity rates, 193 (197).
- Pierre, S. Dak., from Sheridan, Wyo. Coal, 250.
- Pine Bluff, Ark., to New Orleans, La. Hardwood lumber, 215.
- Pittsburgh, Pa. Switching charges, 621.
- Platte River, Nebr., from Sheridan, Wyo. Coal, 250.
- Pompano, Fla., to Chicago, Ill. Vegetables, 274.
- Port Arthur, Tex., to and from Lake Charles, La. Clean rice, 697.
- Portland, Oreg., from New York and Syracuse, N. Y. Automobiles, 412.
- Portsmouth, Ohio, from Milwaukee, Wis. Scrap iron, 703.
- Portsmouth, Va., to Montezuma, Ga. Class and commodity rates, 280.
- Potomac River, points on, and north of, to Columbia, S. C. Class and commodity rates, 339.
- Potomac River, south of, and east of Mississippi River, Mileage coupons on trains, 318.
- Potomac River, south of, from Florida. Fruits and vegetables, 634.
- Providence, R. I., to Montezuma, Ga. Class and commodity rates, 280.
- Quincy, Ill., to and from east of Indiana-Illinois state line. Class and commodity rates, 47.
- Quincy, Ill., to points on O. S. L. via Atchison, Kans. Through routes, 518.
- Quincy, Pa., to Little Rock, Ark., via Memphis, Tenn., Apples, 529.
- Rapid City, S. Dak., from Sheridan, Wyo. Coal, 250.
- Ravenswood, Ill., from Chicago, Ill. Coal, 677.
- Reno, Nev., from California. Lumber, 313.
- Reno, Nev., from interior Iowa cities. Class and commodity rates, 193 (197).
- Rib Lake, Wis., to southern Michigan. Lumber, 459.
- Richmond, Va., to Montezuma, Ga. Class and commodity rates, 280.

- Roanoke, Va., to Montezuma, Ga. Class and commodity rates, 280.
- Rock Island, Ill., to points on O. S. L. via Atchison, Kans. Through routes, 518.
- Rock Springs, Wyo., to Dillon, Mont. Coal, 91.
- Rogers and Siloam Springs, Ark., points between from points on St. L. & S. F. Class rates, 640.
- Roxbury, Mass., from Pennsylvania. Anthracite coal, 235.
- Ryan, Okla., from Tucumcari, N. Mex. Coal, 328.
- St. Joseph, Mo., from Chicago, Ill. Glucose, 673.
- St. Joseph, Mo., to and from Omaha, Nebr., and Kansas City, Mo. Blue vitriol and furniture, 265.
- St. Joseph, Mo., to points on O. S. L. via Atchison, Kans. Through routes, 518.
- St. Joseph, Mo., from Tacoma, Wash. Wooden lard tubs, 237.
- St. Joseph, Mo., from Tucumcari, N. Mex. Coal, 328.
- St. Joseph, Mo., from Wichita, Kans. Volco, 289.
- St. Louis, Mo. Allowances to terminal railroad, 93.
- St. Louis, Mo., to Arkansas. Cured meats and packing-house products, 599.
- St. Louis, Mo., to Douglas, Ga. Class and commodity rates, 445.
- St. Louis, Mo., from Duluth and St. Paul, Minn. Scrap iron, 467.
- St. Louis, Mo., to and from east of Indiana-Illinois State line. Class and commodity rates, 47.
- St. Louis, Mo., to Missouri River cities. Cotton piece goods, 205.
- St. Louis, Mo., from Mobile, Ala. Blackstrap molasses, 666.
- St. Louis, Mo., from New Orleans, La. Coffee, 484.
- St. Louis, Mo., to Oklahoma. Fresh meats, 454.
- St. Louis, Mo., to Oklahoma. Grain and products, 462.
- St. Louis, Mo., to points on O. S. L. via Atchison, Kans. Through routes, 518.
- St. Louis, Mo., to Texarkana, Ark.-Tex. Class and commodity rates, 569.
- St. Louis, Mo., from Wichita, Kans. Volco, 289.
- St. Louis, Mo., to Wilmington, N. C. Corn and products, 383.
- St. Louis & S. F. points to Rogers and Siloam Springs, Ark., and points between. Class rates, 640.
- St. Paul, Minn., to Chicago, Ill., and St. Louis, Mo. Scrap iron, 467.
- St. Paul, Minn., to Colorado common points. Brooms, 310.
- St. Paul, Minn., to Oklahoma. Fresh meats, 454.
- St. Paul, Minn., to points on O. S. L. via Butte, Mont. Through routes, 518.
- St. Paul, Minn., from Tacoma, Wash. Wooden lard tubs, 237.
- Salina, Kans., from Tucumcari, N. Mex. Coal, 328.

- Salt Mine, La., to Cape Girardeau, Mo., and Sulligent, Ala. Salt, 422.
- San Francisco, Cal., from Kenosha, Wis. Refrigerating machinery, 439.
- Sandstone, Minn., to Kansas City, Mo., and other Missouri River points. Building stone, 269.
- Savannah, Ga., from Dallas, Tex. Buggies, 619.
- Schofield, Wis., to southern Michigan. Lumber, 459.
- Searsport, Me., to Fort Fairfield and Caribou, Me. Fertilizer, 398.
- Shawnee, Okla., to Colorado. Potatoes, 298.
- Shawnee group, Ohio, to Huntington, W. Va. Brick, 292.
- Sheridan district, Wyo., to Nebraska and South Dakota. Coal, 250.
- Siloam Springs and Rogers, Ark., points between from St. L. & S. F. points. Class rates, 640.
- Sioux City, Iowa, from Mississippi River crossings. Cotton piece goods, 205.
- Sioux City, Iowa, from Tacoma, Wash. Wooden lard tubs, 237.
- South Carolina. Mileage coupons on trains, 318.
- South Carolina to Missouri River cities. Cotton piece goods, 205.
- South Dakota from Sheridan district, Wyo., and points east and west of Billings, Mont. Coal, 250.
- South Omaha, Nebr. Grain elevators, 664.
- South Omaha, Nebr., to Oklahoma. Fresh meats, 454.
- Southern territory to Missouri River cities. Cotton piece goods, 205.
- Spencer and Manila, Iowa, points between. Grain, 354.
- Spencer, Wis., from Omaha, Nebr., and other points. Wheat and corn, 602.
- Spokane, Wash., from interior Iowa cities. Class and commodity rates, 193 (197).
- Spokane, Wash., from New York, N. Y. Stocks and bonds, 316.
- Springfield, Ill., from and to the East. Percentage rates, 511.
- Stevens Point, Wis., to southern Michigan. Lumber, 459.
- Stonega, Va., to Lebanon, Ky. Bituminous coal, 301.
- Sugar Creek, Mo., to Omaha, Crete, and Grand Island, Nebr. Fuel oil, 661.
- Sulligent, Ala., from Salt Mine, La. Salt, 422.
- Superior, Nebr., from Sheridan, Wyo. Coal, 250.
- Superior, Wis., to points on O. S. L. via Butte, Mont. Through routes, 518.
- Sylvester, Ga., to and from. Class and commodity rates, 433.
- Syracuse, N. Y., to Lansdowne, Pa. Dairy machinery, 406.
- Syracuse, N. Y., to Portland, Oreg. Automobiles, 412.
- Tacoma, Wash., to Chicago, Ill., and other points. Wooden lard tubs, 237.
- Tennessee mines to Columbia, S. C. Coal, 339.

- Tennessee mines from Lebanon, Ky. Coal, 301.
- Tennessee mines to Nashville, Tenn. via Alabama. Coal, 533.
- Tennessee to Missouri River cities. Cotton piece goods, 205.
- Terral, Okla., from Tucumcari, N. Mex. Coal, 328.
- Texarkana, Tex.-Ark., from official classification territory. Iron and steel window frames and sash, 500.
- Texarkana, Tex.-Ark., from various points. Class and commodity rates, 569.
- Texas to Kansas, Oklahoma, and Missouri. Lumber, 471.
- Texas to New Orleans, La. Cottonseed and products 219.
- Texas from official classification territory. Iron and steel window frames and sash, 500.
- Texas, Oklahoma, and other territory. Live stock, 332.
- Tomah, Wis., to southern Michigan. Lumber, 459.
- Trenton, N. J., to Lansdowne, Pa. Dairy machinery, 406.
- Trunk line territory to Elgin, Ill. Class and commodity rates, 380.
- Trunk line territory to Missouri River cities. Cotton piece goods, 205.
- Trunk line territory to and from upper Mississippi River crossings. Class and commodity rates, 47.
- Tucumcari, N. Mex., to Kansas City, Mo. Coal, 328.
- Tulsa from Owen, Okla., inclusive, from Texas, Louisiana, and Arkansas. Lumber, 471.
- Unity, Wis., from Omaha, Nebr., and other points. Wheat and corn, 602.
- Utah common points and Colorado. Fruits and vegetables, 326.
- Utah common points from Atlantic seaboard. Class and commodity rates, 230.
- Utah common points from interior Iowa cities. Class and commodity rates, 193 (199); 563.
- Vicksburg, Miss., to Douglas, Ga. Class and commodity rates, 445.
- Vienna, Ga., from Cincinnati, Ohio, and other Ohio River crossings, Birmingham, Ala., and Knoxville, Tenn. Class rates, 173.
- Virginia cities to Douglas, Ga. Class and commodity rates, 445.
- Virginia cities to Montezuma, Ga. Class and commodity rates, 280.
- Virginia mines to Lebanon, Ky. Bituminous coal, 301.
- Virginia cities to Pelham, Camilla and Sylvester, Ga. Class and commodity rates, 433.
- Washington from Kirby district, Wyo. Coal, 250.
- Wausau, Wis., to southern Michigan. Lumber, 459.
- West Virginia to Milwaukee, Manitowoc, and Kewaunee, Wis., for beyond. Coal, 527.
- Western classification territory. Corrugated iron and steel culverts, 508.

**ABSORPTIONS—Continued.**

Reconsignment at Ludington instead of Milwaukee would avoid out-of-line hauls and the payment of intermediate switching charges, which is absorbed. *Becker v. P. M. R. R. Co.* 645 (653).

Necessity of lines absorbing switching charges. *Fairmont Creamery Co. v. A. T. & S. F. Ry. Co.* 661 (662).

Reduction of absorption of switching charges by line-haul carriers not justified. *Chicago Switching Charges*, 677 (680).

**ACT TO REGULATE COMMERCE.**

Act so amended that it is for the Commission to say whether as a matter of fact discrimination exists where carrier refuses to open its terminals under a contract for the interchange of freight. *Waverly Oil Works v. P. R. R. Co.* 621 (625).

**ACTUAL WEIGHT. See also ESTIMATED WEIGHT; WEIGHT.**

An estimated weight should bear some close relation to the actual weight. Where the estimate is about one-third more than the actual weight it is manifest that there is something radically wrong with the estimated weight. *Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.* 274 (278).

**ADDITIONAL SERVICE.**

Additional charge for switching cars to private scales for weighing is not unlawful unless weights so ascertained are used for assessing freight charges. *American Brake Shoe & Foundry Co. v. B. Ry. of C.* 350.

**ADJUSTMENT OF RATES.**

Present adjustment of rates between upper crossings in Iowa and points east of Indiana-Illinois state line are unduly discriminatory when compared with rates to lower crossings. *Mississippi River Case*, 47.

There should be a readjustment of rates to upper crossings, and spread between those rates and rates to lower crossings should be modified. *Id.* 47 (62).

Damages will not be awarded under new rate adjustment when past rates not found unreasonable. *Interior Iowa Cities Case*, 64 (76).

No reparation under present rate adjustment on traffic that has moved in the past. *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 76 (81).

Which satisfies complaint, but shifts burden to other localities or persons not just. *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 82 (88).

No reparation under present rate adjustment on traffic that has moved in the past. *Id.* 82 (91).

Rates from eastern cities, Ohio and Mississippi River crossings and the west to Ashburn should not exceed those to Tifton. *Mayor & City Council of Vienna v. G. S. & F. Ry. Co.* 173 (176).

Rates from Ohio River crossings, Birmingham and Knoxville to Vienna should not exceed those to Cordele. *Id.* 173 (177).

History of adjustments between the Ohio and Mississippi River crossings to the southeast. *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (183).

Rates from Cincinnati, Ohio, Ohio and Mississippi River crossings to Lagrange placed on definite relationship with rates to Opelika. *Id.* 178 (183).

All-rail rates to the southeast from interior points east of the Buffalo-Pittsburgh line are made with reference to the specifics of trunk lines to Virginia cities. *Atlanta Journal Co. v. S. A. L. Ry.* 186 (188).



ADJUSTMENT OF RATES—Continued.

- Rates to New Mexico destinations should not equalize with Iowa interior points. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 193 (197).  
 Iowa as a whole not entitled to as low a rate as St. Louis to points in New Mexico. *Id.* 193 (198).  
 Sheridan coal should move to points upon the C. & N. W. and the P. R. C. & N. W. herein involved at same rate as enjoyed by Hudson. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250.  
 Difference in cost of production can not be recognized as a basis for the adjustment of freight rates between different localities. *Id.* 250 (262).  
 In complying with order of Commission carrier did not adjust the intermediate rates on the basis of the rate prescribed, but merely applied that rate to all intermediate points where it would result in a reduction of the former rate. *Arizona Corporation Commission v. A. T. & S. F. Ry. Co.* 428 (429).  
 Relation of rates incongruous outcome of previous adjustments and changes made with reference to places other than complainant, rather than the result of any consistent plan having care for the just and equal rights of all. *Mayor & Council of Douglas v. A. B. & A. R. R. Co.* 445 (451).  
 In an attempted compliance with the order of the Commission in previous case instead of lowering the rate to Rose Hill the respondent raised the Ravenswood rate. *Chicago Switching Charges*, 677 (678).  
 Complaint brought to have adjustment restored which had been withdrawn, and which complainant had enjoyed for several years. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (681).

ADMINISTRATIVE RULING.

- Rule 52, Tariff Circular No. 18-A, cited. *Carnegie Board of Trade v. P. Co.* 122 (124).  
 Rule 77, Tariff Circular No. 18-A, cited. *Sandstone, Minn.-Missouri River Building Stone Rates*, 269.  
 Conference Ruling No. 286 (f). Executing bill of lading containing provisions impossible of execution. *American Agricultural Chemical Co. v. B. & A. R. R. Co.* 398 (400).  
 Conference Ruling No. 350, shipment stopped short of the original destination. Refund permitted if provided in tariff. *Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.* 364 (367).

ADVANCES IN RATES.

IN GENERAL.

- The fact that other rates may be reduced if the increases are not permitted to become effective affords no predicate that the present rates are unreasonably low. *Brick Rates from Ohio Points to Huntington, W. Va.* 292 (297).  
 Statement that nothing will be offered for transportation under increased rates, can not be accepted as a justification. *California-Nevada Lumber Rates*, 313 (315).  
 Proposed increases to \$40 per car having been withdrawn and previous rate of \$35 per car reinstated, proceeding dismissed. *Refrigeration of Fruits and Vegetables*, 326.  
 Rates advanced on champagne from California to New York to equal rates in opposite direction. *Schmidt & Peters, Inc. v. A. T. & S. F. Ry. Co.* 376 (377).

## ADVANCES IN RATES—Continued.

## IN GENERAL—Continued.

No opinion expressed on request to reduce minimum that respondent did not propose to advance. Classification of Iron and Steel Window Frames and Sash, 500.

Where an increase in rates may operate to create or increase a discrimination it is always necessary to inquire in passing upon the propriety of the increase whether the discrimination be undue. Grain Rates in C. F. A. Territory, 549 (557).

Change in long-standing relation of proportional rates on grain from upper and lower Mississippi River crossings not justified. *Id.* 549 (555).

Direct lines to Shreveport have depressed their rates to meet combinations through lower Mississippi River crossings. They can not be required to raise their rates in order to place Texarkana upon the same basis as Shreveport. *Texarkana Freight Bureau v. St. L. L. M. & S. Ry. Co.* 569 (581).

Advance in storage charges on traffic held in freight sheds after expiration of free time justified. *New Orleans Storage Rules and Regulations*, 605 (607).

## JUSTIFICATION.

On westbound traffic the sum of the rates west of Duluth and the lake-and-rail rates to that port from the east makes lower than the all-rail rates prescribed by commission in intermountain cases. *Transcontinental Rates from Group F*, 1 (4).

Points in question, by reason of their location, naturally belong in groups to which they are assigned in proposed tariffs. *Id.* 1 (4).

Changes necessary to avoid fourth section violations and to prevent substantial maladjustment of groups D, E, and F. *Id.* 1 (5).

Explanation of circumstances which caused error in tariff. *Gottron Bros. Co. v. G. & W. R. R. Co.* 38 (46).

Right of carrier to long haul. Rates on Cottonseed and its Products, 219 (221).

Car-mile earnings and revenue per car are low. Rates on Tin Cans and Other Commodities Between California and Points in Other States, 247 (249).

The reasons given are that many of the commodities do not actually move. *Commodity Rates Between Missouri River Points*, 265 (267).

The fact that there is not and has not been for a considerable period any movement is not sufficient justification for the cancellation of the commodity rates, leaving higher rate in effect. *Sandstone, Minn.-Missouri River Building Stone Rates*, 269 (271).

The Rock Island avers that the cost of operation of its entire line has increased, but no details are given as to the system as a whole or as to the particular lines here involved. *Kansas-Iowa Brick Rates*, 285 (287).

Contention that increased rates were made necessary in order to preserve group adjustments, obtain proper remuneration for the services rendered, and to prevent reductions in other rates, with consequent loss of revenue. *Brick Rates from Ohio Points to Huntington, W. Va.* 292 (298).

In order to equalize rates in opposite direction. *Oklahoma-Colorado Potato Rates*, 298 (299).

The propriety of an increase on one kind of paper coincident with a reduction on all other kinds of paper, found to have been established. *Paper Rates from Manitowoc and Milwaukee to Kaukauna, Wis.* 305.

## ADVANCES IN RATES—Continued.

## JUSTIFICATION—Continued.

Brooms, as a manufactured article, should, in accordance with accepted principles, pay a rate higher than broom corn, which is a raw material. Broom Rates to Colorado Points, 310 (311).

Carrier not justified in increasing factor where through rate exceeds sum of the intermediate rates. California-Nevada Lumber Rates, 313 (315). Proposed increases found to be result of dispute between carriers over division of joint rates and not justified. New Mexico Coal Rates, 328. Cost of betterments charged to operating expenses, no justification for increase in rates. New York Butter and Cheese Rates, 330.

In order to remove discrimination in rates on wool in favor of Lewiston, Me., against Skowhegan, Me., carriers advanced rates from Lawrence to Lewiston. Massachusetts-Maine Wool Rates, 396.

Rates on scrap iron from Duluth, St. Paul, and Minneapolis increased to relieve Sioux Falls from a situation apparently unfair. Scrap-Iron Rates Between Duluth and Chicago, 467 (468).

Carriers not justified in increasing rate claimed to be unduly low which is established under compulsion of competitive conditions. Grain Rates in C. F. A. Territory, 549 (557).

## WHAT CONSTITUTES.

Modifying the F group by distributing parts of it among groups D and E. Transcontinental Rates from Group F, 1 (3).

Withdrawal of commodity rates of 50 cents per 100 pounds on salt from Duluth to south Pacific coast terminals, and to advance rate to 60 cents, on Chicago basis. Id. 1 (6).

Correction of tariff by putting in qualifying phrase inadvertently omitted. Gottron Bros. Co. v. G. & W. R. R. Co. 88 (46).

Restricting to certain routes the application of the export rate, thereby causing extra switching charge. Rates on Cottonseed and its Products, 219.

Accomplished by advances in the commodity rates or by the establishment of class rates on certain articles heretofore accorded a commodity rating. Commodity Rates Between Missouri River Points, 265 (266).

Change in classification. Rates on Tin Cans and Other Commodities, 247 (248).

Upon request under Rule 77, Tariff Circular No. 18-A, that no higher rates would be established on short notice from any intermediate point, respondents canceled joint commodity rates. Sandstone, Minn.-Missouri River Building Stone Rates, 269.

Increase in rates in order to retire from traffic to competitive points rather than to sacrifice much-needed additional revenue on traffic to its intermediate local stations. Kansas-Iowa Brick Rates, 285 (286).

Cancellation of commodity rates leaving class rate in effect. California-Nevada Lumber Rates, 313; New York Butter & Cheese Rates, 330.

Cancellation of joint rates, which would have made combination rates the only available rates. New Mexico Coal Rates, 328.

Application of interstate distance tariff on grain instead of Iowa distance tariff. Iowa Grain Rates, 354.

Attempt to make charges uniform in territory. Storage Charges in C. F. A. Territory, 372.

Cancellation of through rates. Oklahoma Grain Rates, 462; Lumber Rates Texas, etc., to Oklahoma and Arkansas, 471.

**ADVANCES IN RATES—Continued.****WHAT CONSTITUTES—Continued.**

Withdrawal of reshipping rates. Grain Rates in C. F. A. Territory, 549 (553).

**SPECIFIC INSTANCES.**

Advances justified. *Gotttron Bros. Co. v. G. & W. R. R. Co.* 88; Rates on Cottonseed and its Products, 219; Commodity Rates Between Missouri River Points, 265; Oklahoma-Colorado Potato Rates, 298; Paper Rates from Manitowoc and Milwaukee to Kaukauna, Wis. 305; Broom Rates to Colorado Points, 310; Massachusetts-Maine Wool Rates, 396; Scrap-Iron Rates Between Duluth and Chicago, 467; Grain Rates in C. F. A. Territory, 549; Rates on Packing-House Products, 599; Omaha-Wisconsin Grain Rates, 602.

Advances not justified. Sandstone, Minn.-Missouri River Building Stone Rates, 269; Kansas-Iowa Brick Rates, 285; Brick Rates from Ohio Points to Huntington, W. Va. 292; California-Nevada Lumber Rates, 313; Refrigeration of Fruits and Vegetables, 326; New Mexico Coal Rates, 328; New York Butter and Cheese Rates, 330; Iowa Grain Rates, 354; Storage Charges in C. F. A. Territory, 372; Omaha-Oklahoma Fresh-Meat Rates, 454; Oklahoma Grain Rates, 462; Lumber Rates Texas, etc., to Oklahoma and Missouri, 471; Iowa-Minnesota Cement Rates, 477; Grain Rates in C. F. A. Territory, 549 (554); Rates on Soda Ash and Other Commodities, 613; Chicago Switching Charges, 677.

Advances justified in part. Transcontinental Rates from Group F, 1; Rates on Tin Cans and Other Commodities, 247; Detroit Switching Charges, 494; Scrap Iron Rates Between Chicago, Ill. and Milwaukee, Wis. 525; Rates on Coal to Milwaukee and other Wisconsin Points, 527; Kansas City & M. Ry. Co. Rate Cancellations, 640.

Advances withdrawn. Classification of Iron and Steel Window Frames and Sash, 500.

**ADVANTAGES. See also COMMERCIAL AND ECONOMIC CONDITIONS; LOCATION.**

Duluth and the Twin Cities are fairly entitled to every rate advantage that their proximity to the Great Lakes may fairly give them. Transcontinental Rates from Group F, 1 (4).

Natural disadvantages of Carrollton and its lack of facilities for competitive transportation should not be magnified unduly and should not be allowed to obscure its right to reasonable rates. Board of Trade of Carrollton v. C. of G. Ry. Co. 154 (168).

The holders of mileage books gain an advantage over other passengers so far as rates are concerned, and are not at a disadvantage otherwise. In re Mileage Books, 318 (323).

We can not properly permit the complainant to obtain by means of refund an advantage to which it is not entitled under regulations formerly in effect. Clinton Sugar Refining Co. v. C. & N. W. Ry. Co. 364 (371).

Claim that proposed rules as to storage would result in driving business from the smaller companies to the larger ones operating tank wagons. Storage charges in C. F. A. Territory, 372 (374).

**ADVERTISING.**

Importance of freight rates as a factor in the cost of marketing products—volco—as compared with cost of advertising. Volco Mfg. Co. v. A. T. & S. F. Ry. Co. 289 (290).

**AGREEMENTS.**

With shippers relative to weight certified to by shipper. In re Weighing of Freight by Carriers. 7 (7).

**AGREEMENTS—Continued.**

**Allegation that negotiations between shipper and carrier were conducted in such manner as to give improper advantage to shipper through advance information as to reduced rates to be published, not sustained.** *Molasses Rates from Mobile*, 666 (669).

**ALLOWANCES.**

**Frequently made on account of drying out of coal in transit. In re Weighing of Freight by Carriers**, 7 (25).

**Commission can not compel trunk line to make allowances to industry under section 15 for services rendered by industrial line.** *Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (101).

**Can not be made under section 15 to industrial line which is a common carrier as railway is no longer "the owner of property transported."** *Id.* 93 (102; 108).

**Under section 15 must not be above reasonable cost of service performed by shipper.** *Id.* 93 (101).

**Refusal to allow one-fourth of one cent for the elevation and transfer of barley converted into malt does not result in unjust discrimination.** *Milwaukee Maltsters' Traffic Asso. v. G. T. W. Ry. Co.* 489.

**ALTERNATIVE RATES.**

**When combination on Missouri River is less, the lower rate shall apply.** *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 193 (198).

**Higher rates and lower minimum weights, with privilege of two-for-one rule, or reduced rates and higher minimum applicable to cars of all sizes, without benefit of two-for-one rule.** *Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co.* 237 (239).

**Under alternative provision of tariff lower rate applicable to bananas than applied.** *Bryant Co. v. Ft. W. & D. C. Ry. Co.* 594 (595).

**AMBIGUOUS TARIFF.**

**Reconsignment of coal at Ludington and Milwaukee.** *Becker v. P. M. R. R. Co.* 645 (648).

**AMENDMENT OF COMPLAINT.**

**At hearing.** *Town of Pelham v. A. C. L. R. R. Co.* 433 (437); *Bryant Co. v. Ft. W. & D. C. Ry. Co.* 594.

**Complainant asks for mutual switching arrangements among the connecting lines at Pittsburgh. System of joint rates suggested, but no order entered. If carriers do not comply with suggestions, complaint may be amended.** *Waverly Oil Works v. P. R. R. Co.* 621 (632).

**AMERICAN BOTTOMS.**

**Described.** *Alton Board of Trade v. C. & A. R. R. Co.* 589 (590).

**ANALOGOUS ARTICLES.**

**Take fourth class in less than carloads and fifth class in carloads, which is not an improper relation.** *German Kali Works, Inc., v. A. T. & S. F. Ry. Co.* 223 (229).

**ANHEUSER-BUSCH BREWING ASSOCIATION.**

**Is the principal industry served by the complainant.** *Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (94).

**ANIMAL FOODS.**

**Manufacture of, in the United States.** *Molasses Rates from Mobile*, 666 (667).

**ANY-QUANTITY RATES.**

**Carload rating refused on ground that business conditions in the territory had adapted themselves to existing any-quantity rates.** *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (209).

**INDEX.**

**Quantity Rate.** German Kali Works, 225 (224).

**Lawrence, Mass., to Lewiston, Me., Wool Rates,** 396.

**from New York to California terminals**  
**Schmidt & Peters, Inc., v. A. T. & S. F. Ry.**

**principally serves preferred city. Elgin Com-**  
**L. E. R. 380 (382).**

**the protests was withdrawn, and at the hearing**  
**any testimony or entered any appearance. We may**  
**the protestants are no longer concerned over the**  
**Charges, 390 (392).**

**River Case, 47 (51).**

**those from Tuscaloosa by fixed arbitraries.**  
**Trade & Cotton Exchange v. A. G. S. R. R. Co.**

**River crossings to Pelham, Camilla and Sylvester,**  
**the addition of prescribed arbitraries to the rates**  
**points. They are published in a joint agents'**  
**through rates. Town of Pelham v. A. C. L. R. R.**

**one-line haul prescribed in case of a two-line haul.**  
**R. R. Com'rs v. A. E. R. R. Co. 563 (567).**

**Northwestern Woodenware Co. v. C. M. & P. S. Ry.**

**Broom Rates to Colorado Points, 310 (311).**

**Cement Rates, 477 (481).**

**St. Louis Coffee Importers v. I. C. R. R. Co.**

**Rates Between Chicago, Ill., and Milwaukee, Wis.**

**Nashville v. L. & N. R. R. Co. 533 (539).**

**merchandise. Iowa State Board of R. R. Com'rs**  
**363 (367).**

**Sligo Iron Store Co. v. St. L. & S. F.**

**Marshall Oil Co. v. C. G. W. R. R. Co. 707**

**EARNINGS.**

**Rates Between Chicago, Ill., and Milwaukee, Wis.**

**on I. C. and T. C. Traffic Bureau of Nashville**  
**333 (540).**

**River crossings from New York City is 1,114**

**upper crossings, 1,098 miles. Mississippi River**

**AVERAGE DISTANCE—Continued.**

The short-line distance from New York to Springfield is only very slightly in excess of that to Peoria, and the average distance from the Atlantic seaboard to these two cities is approximately the same. *Springfield Commercial Asso. v. P. R. R. Co.* 511 (518).

*Nashville from various mines. Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (534).

*Kansas City and Memphis to Shreveport and Texarkana. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (573).

*St. Louis to Texas common points. Id.* 569 (576).

The average distance from Kansas City to the Dallas-Fort Worth group is greater than to Texarkana and Shreveport. *Texarkana* takes same class rates as the Dallas-Fort Worth group. *Id.* 569 (580).

*Wichita, Kans., to Texas group-3 points. Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (684).

**AVERAGE HAULS.**

An accurate presentation of per ton mile yield must include a statement which will show the actual hauls and the average length of the hauls. *Lumber Rates Texas, etc., to Oklahoma and Missouri*, 471 (475).

**AVERAGE WEIGHT.**

Per piece of express matter. *In re Express Rates*, 132 (145).

*Glucose in tank and box cars. National Syrup Co. v. C. & N. W. Ry. Co.* 673 (675).

**BACK HAUL.**

The rate to Douglas from the west is made up of the rate to Brunswick plus the rate from Brunswick back to Douglas. These rates are determined by competition of water lines from the eastern ports and rail lines through the Virginia gateways. *Mayor & Council of Douglas v. A. B. & A. R. R. Co.* 445 (451).

Additional back haul and reconsigning charges would accrue over routes offered for comparison and are not acceptable tests. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (686).

**RAIL ARBITRARIES.**

Referred to. *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (183).

**BASIS OF RATES.**

Distance. *Mississippi River Case*, 47 (61).

To noncompetitive points in the southeast is lowest combination on nearby competitive points. *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (180).

All-rail rates to southeast from interior points east of Buffalo-Pittsburgh line are made with reference to the specifics of trunk lines to Virginia cities. *Atlanta Journal Co. v. S. A. L. Ry.* 186 (188).

Rates from eastern points of origin to interior Iowa destinations are made by adding together the rate to Mississippi River and rate from river to destination. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 193 (194).

Rates from interior Iowa points to the west are made by adding together the local rate up to Missouri River and rate from that river. *Id.* 193 (194).

Zone rates. *Id.* 193 (201).

**BASING POINTS.**

Described by defendants' witness as "Where there is considerable freight."  
*City of Montezuma v. C. of G. Ry. Co.* 280 (282).

All long-distance rates from eastern and western points to Columbia, S. C., and Augusta, Ga., may be shown substantially by the rates from a few pivotal points of origin, the rates from other points bearing established relations thereto. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (340).

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Cost of betterments charged to operating expenses, no justification for increase in rates. *New York Butter and Cheese Rates*, 330.

U. P. line has been reballasted, grades and curvatures have been eliminated, and a large part of the line double-tracked. Double-tracks have been laid on much of the line of the O. S. L. *U. S. v. U. P. R. R. Co.* 518 (523).

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No notation on bill of lading indicating shipments were for export. Higher domestic rate properly assessed. *Port Arthur Rice Milling Co. v. T. & F. S. Ry. Co.* 697 (700).

**BLACKSTRAP MOLASSES.**

Defined. *Molasses Rates from Mobile*, 666 (670).●



**BLANKET RATES.**

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Fruit from Rocky Mountains to the Atlantic seaboard includes most points in trunk line and central freight association territories. *Mason Bros. v. S. P. Co.* 402 (404).

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Respondents shall adopt the block system of stating rates. In re Express Rates, 132 (137).

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Boat line originating traffic considered same as branch line to rail carrier.

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Texarkana, Ark., and Texarkana, Tex., are physically one continuous city. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (571).

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Where traffic originates upon a branch line the main line should accept for its haul from the junction point something less than it receives upon business originating at the junction point. *R. R. Com'rs. of Fla. v. A. C. L. R. R. Co.* 356 (359).

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**BREAK-BULK SERVICE.**

Lighterage companies deliver freight on docks or in warehouses of consignees without additional charge for unloading. *Chicago Lighterage Charges*, 390.

**BREAK-UP YARD.**

Rates up to. *Detroit Switching Charges*, 494 (496).

**BRIDGES.**

Charge at St. Louis. *Mississippi River Case*, 47 (50).

Rate of 5 cents on beer from Dubuque, Iowa, to East Dubuque, Ill., involving two switching services besides use of bridge, not found unreasonable. *East Dubuque Supply Co. v. I. C. R. R. Co.* 425 (427).

Dividing the valuation placed upon the bridge by the assessed valuation of defendant's line in Iowa and Illinois, it appears that such valuation represents the assessed value of 66½ miles of line. *Id.* 425 (427).

In prescribing scale of rates between Iowa and Utah and Colorado points, Commission somewhat influenced by the fact that the Missouri River must be crossed. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 563 (568).

Construction across Mississippi River at Alton, Ill., cause of industrial awakening. *Alton Board of Trade v. C. & A. R. R. Co.* 589 (591).

When rates to St. Louis and East St. Louis were made the same, the bridge toll was abolished. *Springfield Commercial Assn. v. P. R. R. Co.* 511 (513).

**BULK.**

Higher rate on salt in packages than on salt in bulk neither unreasonable nor unduly discriminatory. *Gotttron Bros. Co. v. G. & W. R. R. Co.* 38 (42).

**BULK—Continued.**

From 110 to 112 bushels of malt are produced from 100 bushels of barley, the process of malting resulting in a decrease in weight per bushel and an increase in bulk. *Milwaukee Maltsters' Traffic Asso. v. G. T. W. Ry. Co.* 489 (490).

**BURDEN OF PROOF.**

Burden of justifying increased rate resulting from correction of inadvertent omission of qualifying phrase in tariff fully met when circumstances are explained. *Gotttron Bros. Co. v. G. & W. R. R. Co.* 38 (46).

While the law casts upon the respondents the burden of showing that the increased rates are reasonable, parties at whose instance suspensions are ordered should present to the Commission all facts, which, in their opinion, tend to show that the increases should not be allowed. *Commodity Rates Between Missouri River Points*, 265 (267).

Not satisfactorily discharged by the presentation of earnings per ton mile and suggestions of increased general operating expenses. *Kansas-Iowa Brick Rates*, 285 (287).

General statement that cost of conducting terminals has increased and more revenue is needed. This kind of testimony furnishes no justification. It is susceptible of exact proof. *Detroit Switching Charges*, 494 (497).

**BY-PRODUCTS.**

Corn when manufactured into glucose produces about 75 per cent. glucose and 25 per cent. of various by-products. *Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.* 364.

In the past the same rate was applied on grain and the product manufactured from grain. Of late the rate upon the product has been somewhat higher, and a separate rate provided for articles known as by-products. *Grain Rates in C. F. A. Territory*, 549 (552).

Blackstrap molasses. *Molasses Rates from Mobile*, 666 (670).

**CANADA.**

Shipments between two points in Maine pass through a portion of the Dominion of Canada. *American Agricultural Chemical Co. v. B. & A. R. R. Co.* 398.

It is doubtful if we could require American lines to establish and maintain for the future a rate to Canadian points. *Rates on Soda Ash and Other Commodities*, 613 (615).

We can require American lines to maintain rates to Canada which are in effect until some affirmative action is taken by some Canadian line, over which we have no control. *Id.* 613 (615).

**CAPITAL STOCK.**

*L. & N. T. Co.* owned by *L. & N. R. R. Co.* *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (540).

**CAR DISTRIBUTION.**

In the past there have been great injustices in the apportionment of coal cars in times of car shortage by reason of such apportionment without regard to any general rule. *National Coal Co. v. B. & O. R. R. Co.* 442 (444).

Carriers should apportion cars upon basis ascertained in advance and take into account not only physical capacity of each mine to make shipments, but also the commercial capacity of each mine to find a market for its coal. No discrimination against shipper whose commercial misfortunes operated to reduce their ratings. *Id.* 442 (444).

**BASING POINTS.**

Described by defendants' witness as "Where there is considerable freight." *City of Montezuma v. C. of G. Ry. Co.* 280 (282).

All long-distance rates from eastern and western points to Columbia, S. C., and Augusta, Ga., may be shown substantially by the rates from a few pivotal points of origin, the rates from other points bearing established relations thereto. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (340).

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**BRIDGES.**

Charge at St. Louis. *Mississippi River Case*, 47 (50).

Rate of 5 cents on beer from Dubuque, Iowa, to East Dubuque, Ill., involving two switching services besides use of bridge, not found unreasonable. *East Dubuque Supply Co. v. I. C. R. R. Co.* 425 (427).

Dividing the valuation placed upon the bridge by the assessed valuation of defendant's line in Iowa and Illinois, it appears that such valuation represents the assessed value of 66½ miles of line. *Id.* 425 (427).

In prescribing scale of rates between Iowa and Utah and Colorado points, Commission somewhat influenced by the fact that the Missouri River must be crossed. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 563 (568).

Construction across Mississippi River at Alton, Ill., cause of industrial awakening. *Alton Board of Trade v. C. & A. R. R. Co.* 589 (591).

When rates to St. Louis and East St. Louis were made the same, the bridge toll was abolished. *Springfield Commercial Asso. v. P. R. R. Co.* 511 (513).

**BULK.**

Higher rate on salt in packages than on salt in bulk neither unreasonable nor unduly discriminatory. *Gottron Bros. Co. v. G. & W. R. R. Co.* 88 (42).

**BULK—Continued.**

From 110 to 112 bushels of malt are produced from 100 bushels of barley, the process of malting resulting in a decrease in weight per bushel and an increase in bulk. *Milwaukee Maltsters' Traffic Asso. v. G. T. W. Ry. Co.* 489 (490).

**BURDEN OF PROOF.**

Burden of justifying increased rate resulting from correction of inadvertent omission of qualifying phrase in tariff fully met when circumstances are explained. *Gottron Bros. Co. v. G. & W. R. R. Co.* 38 (46).

While the law casts upon the respondents the burden of showing that the increased rates are reasonable, parties at whose instance suspensions are ordered should present to the Commission all facts, which, in their opinion, tend to show that the increases should not be allowed. *Commodity Rates Between Missouri River Points*, 285 (287).

Not satisfactorily discharged by the presentation of earnings per ton mile and suggestions of increased general operating expenses. *Kansas-Iowa Brick Rates*, 285 (287).

General statement that cost of conducting terminals has increased and more revenue is needed. This kind of testimony furnishes no justification. It is susceptible of exact proof. *Detroit Switching Charges*, 494 (497).

**BY-PRODUCTS.**

Corn when manufactured into glucose produces about 75 per cent. glucose and 25 per cent. of various by-products. *Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.* 364.

In the past the same rate was applied on grain and the product manufactured from grain. Of late the rate upon the product has been somewhat higher, and a separate rate provided for articles known as by-products. *Grain Rates in C. F. A. Territory*, 549 (552).

Blackstrap molasses. *Molasses Rates from Mobile*, 666 (670).

**CANADA.**

Shipments between two points in Maine pass through a portion of the Dominion of Canada. *American Agricultural Chemical Co. v. B. & A. R. R. Co.* 398.

It is doubtful if we could require American lines to establish and maintain for the future a rate to Canadian points. *Rates on Soda Ash and Other Commodities*, 613 (615).

We can require American lines to maintain rates to Canada which are in effect until some affirmative action is taken by some Canadian line, over which we have no control. *Id.* 613 (615).

**CAPITAL STOCK.**

*L. & N. T. Co. owned by L. & N. R. R. Co.* *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (540).

**CAR DISTRIBUTION.**

In the past there have been great injustices in the apportionment of coal cars in times of car shortage by reason of such apportionment without regard to any general rule. *National Coal Co. v. B. & O. R. R. Co.* 442 (444).

Carriers should apportion cars upon basis ascertained in advance and take into account not only physical capacity of each mine to make shipments, but also the commercial capacity of each mine to find a market for its coal. No discrimination against shipper whose commercial misfortunes operated to reduce their ratings. *Id.* 442 (444).

**CAR DISTRIBUTION—Continued.**

The rights and duties of these various carriers in the apportionment of available car supply must be determined from the act and not from any contract which they may choose to make. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (505).

**CAR EARNINGS. See also AVERAGE.**

As measure of rates. *Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co.* 237 (240); *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (676); Rates on Tin Cans, etc. 247 (249).

Brooms and broom corn. Broom Rates to Colorado Points, 310 (311).

Cement and lime. *Iowa-Minnesota Cement Rates*, 477 (481).

On coffee could be materially increased by heavier loading. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (486).

Per car earnings, with distance considered, are much more reliable than ton-mile statistics. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (535).

**CAR FERRIES.**

Ludington, Mich., across Lake Michigan to Milwaukee and Manitowoc, Wis. *Becker v. P. M. R. R. Co.* 645 (647).

**CAR FITTING.**

Boards used in shipments of roofing material. *Patent Vulcanite Roofing Co. v. A. & W. Ry. Co.* 610 (611).

**CAR FLOAT.**

The handling of freight by car float and by lighter differs materially. *Chicago lighterage charges*, 390 (394).

Service, without additional charge to shippers or consignees for unloading. *Id.* 390 (391).

**CAR FURNISHING.**

Each carrier subject to act is charged with the duty of furnishing cars to industries located upon its line. In case of through routes the obligation to furnish cars for shipments to points upon the lines of its connections is joint with such connections. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (506).

**CAR-MILE REVENUE.**

Coal. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (539).

**CAR REVENUE.**

As measure of rate. *Commodity Rates Between Missouri River Points*, 285 (288).

**CAR SHORTAGE. See also CAR DISTRIBUTION.**

In times of car shortage the D. & R. G. and C. & S., in order that their supply of cars may not be depleted by diversions, forbid the loading of their cars to points on the Santa Fe lines. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (504).

**CARLOAD. See also ANY-QUANTITY; LESS THAN CARLOAD.**

In determining whether a carload rating should be accorded, not merely the physical but the commercial and economic aspects must be considered. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (207).

That shipper presented cotton in such form that carload lading could be doubled and cost of transportation correspondingly diminished, does not as a matter of right, entitle him to better rate. *Id.* 205 (208).

Whether carload rating should be accorded in particular instance depends not only upon whether that commodity is offered in carload quantities, but upon other considerations. *Id.* 205 (209).



**CARLOAD—Continued.**

To establish carload rating here and not elsewhere would be to throw out of balance the relation between rates on cotton piece goods in all parts of the country. *Id.* 205 (210).

As a rule carload freight is weighed at point of origin. *American Bake Shoe & Foundry Co. v. B. Ry. of C.* 350 (351).

Checking car against car, can not properly be done, since it gives to the less-than-carload shipment of corn in, and in some cases of the product out, the carload rate. *Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.* 364 (370).

There is no necessity for the establishment of a carload rate on champagne if the present any-quantity rate is a reasonable rate for the transportation of that commodity in carloads. *Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co.* 376 (378).

The Official Classification contains a rule prohibiting carriers from unloading carload freight for consignee. *Chicago Lighterage Charges*, 390 (394).

Privilege of mixing carloads of wrought-iron conduit pipe and fittings should be granted where same commodity rates in effect on straight carloads of pipe and straight carloads of pipe fittings. *New England Electric Co. v. C. R. I. & P. Ry. Co.* 418.

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Carload shipments are sealed and transported intact to destination, and this method results in the minimum risk of pilferage or damage as compared with the risk to which less-than-carload shipments are exposed. *Keats Auto Co. v. O.-W. R. R. & N. Co.* 412 (413).

Less-than-carload rates are applicable to a different class of traffic from that embraced in carload and peddler-car shipments. *Rates on Packing-House Products*, 599 (600).

Express service desired because shipments to smaller communities are not of sufficient size to warrant movement in carload quantities and the less-than-carload service by freight is too slow except where package cars are run. *R. R. Com'rs. of Fla. v. S. Exp. Co.* 634 (635).

**CAROLINA TERRITORY.**

Described. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (343).

**CARRIER. See COMMON CARRIER.****CARS OFF LINE. See EMBARGOES.****CENTRAL FREIGHT ASSOCIATION MILEAGE SCALE.**

Referred to. *Mississippi River Case*, 47 (61).

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Slight differences in the rate are not felt by the producer of grain to the same extent that they are by many other industries. *Grain Rates in C. F. A. Territory*, 549 (559).

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Little merit to contention that lower rates should be made over circuitous line. *Transcontinental Rates from Group F*, 1 (4).

Traffic should not be forced into roundabout and unnatural routes. *Rates on Cottonseed and its Products*, 219 (221).

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Traffic should not be forced into roundabout and unnatural routes. *Rates on Cottonseed and its Products*, 219 (221).

**CIRCUITOUS ROUTE—Continued.**

Petition to establish between two points in same state a through route and joint rate via a circuitous interstate route, dismissed. *Haverhill Box Board Co. v. B. & A. R. R. Co.* 336.

We can not properly allow an unreasonable rate by the direct line for the purpose of permitting the circuitous line to engage in the business at a reasonable profit. *Grain Rates in C. F. A. Territory*, 549 (558).

The short line with two or more line hauls may meet the rate by the long line and decline to establish a joint through rate by the short line, unless the line is so circuitous as to be unreasonably long within the definition of the 15th section. *Iowa State Board of R. R. Com'rs v. A. E. R. R. Co.* 563 (567).

While rates to Shreveport may be abnormal via circuitous routes due to competition this fact does not prove that the rates by the direct routes are abnormal. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (577).

Rates via circuitous routes made to meet short line road to long-distance points do not bear a reasonable relationship to intermediate points. *Alton Board of Trade v. C. & A. R. R. Co.* 589 (593).

In establishing through route no railroad should be required to haul traffic over less than the entire length of its line unless such route is unduly circuitous. *Waverly Oil Works v. P. R. R. Co.* 621 (630).

**CIRCUMSTANCES AND CONDITIONS.**

Time can not be permitted to rob a group of communities of their right to relief from what, in view of changed conditions, will be a manifest discrimination if further continued. *Mississippi River Case*, 47 (55).

Surrounding movement of traffic to and from upper crossings not so different from those at lower crossings as to warrant present difference in rates. *Id.* 47 (56, 58).

Considered in connection with section 2. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (167).

**CLAIMS. See LIMITATIONS OF ACTIONS.**

The filing of each claim is, in essence, an independent proceeding on the part of that complainant, and the statute of limitation must run from the date of the filing in each individual case. *In re Advances on Live-stock*, 332 (335).

General allegation showing the point of origin, destination, etc., sufficient to constitute filing. *Id.* 332 (335).

**CLASS AND COMMODITY RATES.**

Ordinarily whatever relation is established for class rates would apply in case of commodity rates. *Iowa State Board of R. R. Com'rs v. A. E. R. R. Co.* 193 (196).

Advances accomplished by advances in commodity rates or by the establishment of class rates on certain articles heretofore accorded a commodity rating. *Commodity Rates Between Missouri River Points*, 265 (266).

Class rates in effect to Columbia, S. C., whereas to Augusta, Ga., specific commodity rates have been provided. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (341).

Less-than-carload commodity rate on automobiles eliminated, leaving class rate in effect. *Keats Auto Co. v. O.-W. R. R. & N. Co.* 412 (414).

Specific class rates apply to Texarkana and commodity rates to Shreveport from same points of origin. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (580).

**CLASS AND COMMODITY RATES—Continued.**

As a general rule commodity rates to Texas points are a smaller percentage below the corresponding class rates than those to Texarkana and Shreveport. *Id.* 569 (581).

Lower commodity rates on petroleum than class rates on petroleum and its products. *Fairmont Creamery Co. v. A. T. & S. F. Ry. Co.* 661 (663).

**CLASS RATES.**

From Atlantic seaboard to Chicago and St. Louis are reasonably low, and are product of acute competitive conditions. *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (233).

To apply the same percentage relation in class rates in every part of the country would create confusion and discrimination instead of securing uniformity and equal treatment. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 563 (565).

Mileage scale applicable to class rates prescribed by Commission without fixing uniform relation between classes. *Id.* 563 (565).

It is difficult to see why, in a scientific schedule, Class A and Class 5 should be the same. The object of creating different classes is to apply different rates. *Id.* 563 (566).

**CLASSIFICATION.**

Respondents shall adopt and jointly publish a new and uniform classification. *In re Express Rates*, 132 (137).

Of cotton piece goods compared with that of dry goods. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (211).

Commission recognizes right of western carriers to maintain higher classification and higher rates than prevail in the east. *German Kail Works, Inc. v. A. T. & S. F. Ry. Co.* 223 (224).

Must be by analogy and comparison. *Id.* 223 (225).

Of sulphate of potash and muriate of potash as fifth class in carloads in western classification not found unreasonable, and classification of kainit and muriate of potash as fourth-class in less than carloads is proper; but less than carload rating on sulphate of potash should be fourth-class instead of third class. *Id.* 223 (228).

Shipment of ammonia compressors, condensers, and receivers with oil traps and other appurtenances held to have been entitled to rating under machinery n. o. s. k. d., in pieces. *United Refrigerator & Ice Machine Co. v. C. & N. W. Ry. Co.* 439 (441).

Advance to be withdrawn by respondents. *Classification of Iron and Steel Window Frames and Sash*, 500.

Present ratings on corrugated iron and steel culverts in western classification No 51, not found to be unreasonable. *Klauer Mfg. Co. v. A. T. & S. F. Ry. Co.* 508.

Classification, from its very nature and use, can not be so minute as to do mathematically exact justice to every variety of commerce that may move. *Id.* 508 (510).

Mixed carloads of incubators and brooders. *Lee Co. v. I. C. R. R. Co.* 515 (516).

Gluten feed possesses about the same nutritive value and sells for about the same price, for stock-feeding purposes, as do many articles which are classified as grain products. *Grain rate in C. F. A. Territory*, 549 (553).

Class rates to and from the lower Mississippi River crossings are published under separate classifications. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (578).

## CLASSIFICATION—Continued.

Change in rating on cured meats in sacks from fourth to second class permitted. Rates on Packing-House Products, 599 (601).

Rate on prepared roofing in sheets should not exceed rate on same article in rolls. Patent Vulcanite Roofing Co. v. A. & W. Ry. Co. 610 (612).

Soda ash, caustic soda, and bicarbonate of soda. Rates on Soda Ash and other Commodities, 613.

Contention that description of wagon wood and plow beams in the rough until it has gone through a further process of manufacture amounts to classification not according to character but according to use. Sligo Iron Store Co. v. St. L. & S. F. R. R. Co. 616 (617).

Tendency of Commission has been to classify the various petroleum products to a limited extent. Fairmont Creamery Co. v. A. T. & S. F. Ry. Co. 661 (662).

Returned empty beer packages not found unreasonable. Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co. 688.

## CLEANING CARS.

In connection with weight. In re Weighing of Freight by Carriers, 7 (19).

## CLIMATIC CONDITIONS.

As measure of rate. National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co. 215 (217).

## COASTWISE.

Lower rate in effect when traffic for coastwise or export destinations. Port Arthur Rice Milling Co. v. T. & F. S. Ry. Co. 697.

## C. O. D. SHIPMENTS.

Amount of c. o. d. bill for collection from a consignee shall be considered as declaration of value of shipments, unless greater value is declared.

In re Express Rates, 132 (138).

## COMBINATION RATES.

Through charges based on sum of intermediate rates, but earnings on traffic, are not divided east and west of river on any such basis. Interior Iowa Cities Case, 64 (68).

Through rates to noncompetitive points made by combination of commodity rates to competitive points and local class rates beyond. Lagrange Chamber of Commerce v. A. & W. P. R. R. Co. 178 (181).

Rates from eastern points of origin to interior Iowa destinations are made by adding together the rate to Mississippi River and the rate from that river to destination. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co. 193 (194).

Rates from interior Iowa points to the west are made by adding together the local rate up to Missouri River and the rate from that river. Id. 193 (194).

Through tariffs are often constructed which are less than full combination of rates. Id. 193 (202).

Through rate from eastern destinations to Missouri River ought to be somewhat less than combination upon Mississippi River. Taylor Dry Goods Co. v. M. P. Ry. Co. 205 (213).

Rates from New England mills to Missouri River are made by combination upon Mississippi River. Id. 205 (218).

Ordinarily through rate should be less than combination of intermediates. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co. 230 (232).

Carriers not justified in increasing factor where through rate exceeds sum of intermediate rates. California-Nevada Lumber Rates, 313 (315); Omaha-Oklahoma Fresh-Meat Rates, 454 (458).

**COMBINATION RATES—Continued.**

Factor of combination through rate from Memphis to Little Rock not found unduly prejudicial as compared with proportional rate on through shipments between same points on traffic originating in different localities. *Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co.* 529 (532).

Joint through rate on malt from Minneapolis to Pittsburgh higher than combination made up of rate to Chicago and reshipping rate to Pittsburgh. *Grain Rates in C. F. A. Territory*, 549 (550).

Rates on grain from Illinois to the southeast, south, and southwest are usually made by naming a rate to the Ohio River or to St. Louis, which in combination with the rate beyond makes up the through transportation charges to destination. *Id.* 549 (556).

If carriers publish for interstate use State rates which are lower than through charge, section four must be observed, unless permission to the contrary is granted upon application to this Commission. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 563 (568).

**COMBINED DISTANCE AND BLANKET BASIS.**

Described. *Lebanon Commercial Club v. L. & N. R. R. Co.* 301 (302).

**COMMERCE.**

The character of commerce, not its mere accidents, must determine whether a shipment is local or foreign. *Port Arthur Rice Milling Co. v. T. & Ft. S. Ry. Co.* 697 (700).

**COMMERCIAL AND ECONOMIC CONDITIONS. See also ADVANTAGES; LOCATION.**

As measure of rates. *Mississippi River Case*, 47 (55).

Must be considered in determining whether a carload rating should be accorded. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (207).

It is claimed that if reasonable rates are established it would develop a large movement, and that both the producers and consumers would be greatly benefited thereby. *R. R. Com'rs of Fla. v. S. Exp. Co.* 634 (637).

Commercial and transportation conditions must not be confused, and that the conditions of the market as to any specific commodity is not to be considered the controlling element. *Oklahoma-Colorado Potato Rates*, 298 (300).

Complainant insisted that lower rates in Arizona than are now in effect are a necessity, as there is very little wood available in the State, and such as can be had is expensive. *Arizona Corporation Commission v. A. T. & S. F. Ry. Co.* 428 (430).

Construction of bridge across Mississippi River at Alton, Ill., cause of industrial awakening. *Alton Board of Trade v. C. & A. R. R. Co.* 589 (591).

Location of plant and the commercial control of the price of glucose are working adversely to the complainant's interests. *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (674).

**COMMERCIAL ELEVATION.**

Commission has no jurisdiction to require. *Milwaukee Malsters' Traffic Asso. v. G. T. W. Ry. Co.* 489 (491).

**COMMODITIES. See page 749.****COMMODITY RATES. See also CLASS AND COMMODITY RATES.**

Are special rates which ought to be made with reference to all conditions surrounding transportation of the particular articles between the particular points. *Mississippi River Case*, 47 (63).

Of upper crossings ought not to exceed those in effect to and from St. Louis in greater degree than difference with respect to class rates. *Id.* 47 (68).

**COMMODITY RATES—Continued.**

Sufficient reason not advanced for abolition of class rate and establishment of low commodity rate. *Volco Mfg. Co. v. A. T. & S. F. Ry. Co.* 289 (291).

Discrimination against Douglas by failure to publish commodity rates such as are enjoyed by other places. *Mayor & Council of Douglas v. A. B. & A. R. R. Co.* 445 (451).

**COMMON CARRIER.**

Can not claim reparation from another common carrier. *Mfra. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (108).

Industrial line, held to be a common carrier, is thereafter a public agency which should collect its charge from former owning industry the same as it does from other shippers. *Id.* 93 (102).

Manufacturers Railway, a terminal line in St. Louis, is a common carrier as held in previous report. *Id.* 93 (105).

A lateral branch line of railroad is entitled to a switch connection without regard to its status as plant facility or common carrier. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (505).

**COMMON CONTROL.**

The O. S. L. and U. P. are operated under a common management or control. *U. S. v. U. P. R. R. Co.* 518 (523).

**COMPARATIVE RATES.**

Excursion fares compared with regular passenger fares. *Carnegie Board of Trade v. P. Co.* 122 (129).

Ordinarily whatever relation is established for class rates would apply in case of commodity rates. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 193 (196).

Import rates on blackstrap molasses from New Orleans compared with salt, petroleum and its products, clay, pig lead, magnesite, chrome ore, hemp or jute waste, brewer's rice, and sisal. *Molasses Rates from Mobile*, 666 (670).

It is apparent that carriers are entitled to a somewhat higher rate for the transportation of brooms than would be justifiable for the transportation of broom corn. *Broom Rates to Colorado Points*, 310 (312).

Rates on cement compared with rates on lime and brick. *Iowa-Minnesota Cement Rates*, 477 (481).

No fixed differential on coarse grain to Oklahoma, nor has there been a specific relation of rates, wheat as compared to coarse grain. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (681).

Coffee and sugar. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (487, 488).

Cotton piece goods with dry goods. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (211).

No reason why joint rates should not be maintained on cypress and yellow pine from points of origin on the Iron Mountain as well as on other lumber. *Lumber Rates Texas etc., to Oklahoma and Missouri*, 471 (476).

The fact that there is a lower switching rate on excelsior wood is not sufficient to establish that the rate on beer between same points is unreasonable. *East Dubuque Supply Co. v. I. C. R. R. Co.* 425 (427).

Fuel oil may be used in place of coal, yet comparisons of this nature are not of great value. *Fairmont Creamery Co. v. A. T. & S. F. Ry. Co.* 661 (662).



**COMPARATIVE RATES—Continued.**

We are unable to find that because a lower rate is maintained on furniture and agricultural implements that the rate charged on incubators and brooders was unreasonable. *Lee Co. v. I. C. R. R. Co.* 515.

Higher rates are charged on glucose than on other commodities that can not be transported at so low a cost as glucose. *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (674).

Reshipping rates on grain products from Chicago to points east are usually somewhat higher than the corresponding rate upon grain. *Grain Rates in C. F. A. Territory*, 549 (551).

Grain products and by-products of grain. *Id.* 549 (553).

Ordinarily the rate on malt is the same as that upon grain products, and this is sometimes the same as the grain rate and sometimes slightly higher. *Id.* 549 (551).

Rates on hewn oak ties should not exceed rate on oak lumber. *Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co.* 701 (702).

Newsprint paper compared with wrapping paper. *Atlanta Journal Co. v. S. A. L. Ry.* 186 (190).

Potash fertilizers. *German Kali Works, Inc., v. A. T. & S. F. Ry. Co.* 223 (226).

Lower rate maintained from New Orleans on refined sugar, which is the most valuable product obtained from the cane, than on blackstrap, which is the residue of least value from the manufacture of sugar. *Molasses Rates from Mobile*, 666 (670).

Rate on prepared roofing in sheets should not exceed rate on same article in rolls. *Patent Vulcanite Roofing Co. v. A. & W. Ry. Co.* 610 (612).

Salt compared with cement, clay, brimstone, pig lead, and other low-grade commodities. *Gottron Bros. Co. v. G. & W. R. R. Co.* 38 (43).

Scrap-iron rates should not necessarily be fixed with a definite relation to the rates on pig iron or new rails. *Scrap-Iron Rates Between Duluth and Chicago*, 467 (470).

Scrap iron compared with pig iron, steel rails, ingots, and rolling mill products. *Scrap-Iron Rates Between Chicago, Ill., and Milwaukee, Wis.* 525.

Discriminatory to force wagon wood, and plow beams, in the rough, to bear higher rates than are imposed for like service upon many analogous manufactured wood articles which move at lumber rates. *Sligo Iron Store Co. v. St. L. & S. F. R. R. Co.* 616 (618).

Wooden lard tubs compared with sash, doors, etc. *Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co.* 237 (240).

Western wool weighs more than eastern wool. *Massachusetts-Maine Wool Rates*, 396 (397).

Same on wheat and corn. *Grain Rates in C. F. A. Territory*, 549 (561).

**COMPELLED RATE.**

Rate on coarse salt in bulk from New York fields to Chicago less than normal rate, compelled by competition of rail-and-lake route through Buffalo. *Gottron Bros. Co. v. G. & W. R. R. Co.* 38 (39).

**COMPETITION. See also MARKETS, POTENTIAL, RAILROAD, WATER.**

Available and feasible routes already open via which joint rates are in effect. No good reason why a joint rate should be established over still another route. *Birge-Forbes Co. v. M. K. & T. Ry. Co.* 409 (411).

Benefit of competition to more distant common point secured to local or non-competitive point by applying same rate to latter as applied to common point. *Mayor and Council of Vienna v. G. S. & F. Ry. Co.* 173 (175).

## COMPETITION—Continued.

As justification for granting fourth section application. In re Coal Rates from Anthracite Region to Points on New Haven Railroad, 235.

Does not exist between Montezuma and Dawson, Ga. *Montezuma v. C. of G. Ry. Co.* 280 (281).

Increase in rates in order to retire from traffic to competitive points rather than to sacrifice much-needed additional revenue on traffic to its intermediate local stations. *Kansas-Iowa Brick Rates*, 285 (286).

Rates to Louisville vary according to the grade of coal, whereas to Lebanon one rate governs the carriage of all grades. Not found unjustly discriminatory river and rail competition influencing rates. *Lebanon Commercial Club v. L. & N. R. R. Co.* 301 (304).

Neither to Carolina nor to southeastern territory are rates made primarily upon considerations of mileage, but chiefly in view of competitive forces focused at certain points where the paths of commerce and the routes of transportation meet. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (344).

Low commodity rates in effect from west to Augusta due to an effort to meet market competition of the East. *Id.* 339 (345).

Columbia as well as Augusta has competition to meet from Charleston and from Savannah, and its ability to meet this competition, so far as rates are concerned, is generally less than Augusta's on commodities from the East and on classes and commodities from Cincinnati-Louisville. *Id.* 339 (346).

Manufacturers and dealers at Elgin are in keen competition with manufacturers and dealers at Aurora. *Elgin Commercial Club v. B. & M. R. R.* 390 (381).

Rates from Ohio River crossings to Wilmington, N. C., defendants aver, are built with respect to strong and compelling competition through North Atlantic ports. *Boney & Harper Milling Co. v. A. C. L. R. R. Co.* 383 (387).

The complaining places are all in active competition with the near-by basing points and are adversely affected by the advantages which the latter enjoy in the matter of freight rates. *Town of Pelham v. A. C. L. R. R. Co.* 433 (438).

Douglas is at a material disadvantage in the competition for business of the region tributary to it and its neighboring rivals. It may not justly be denied relief from the handicap under which it labors, because of the circumstance that up to the present it has done well in spite of the handicap. *Mayor and Council of Douglas v. A. B. & A. R. R. Co.* 445 (450).

The rate to Douglas from the West is made up of the rate to Brunswick plus the rate from Brunswick back to Douglas. These rates are determined by competition of water lines from the eastern ports and rail lines through the Virginia gateways. *Id.* 445 (451).

The extent to which a carrier shall lower its rate to meet anticipated competition is a matter primarily for its decision, and should it later raise the rate, the sole question for our determination is whether that increased rate is just and reasonable for the service performed. *Scrap-Iron Rates Between Duluth and Chicago*, 467 (470).

In the hauls of the length here involved, ranging from 650 to 1,245 miles, a considerable addition in mileage could well be overlooked, especially where the necessity exists of maintaining points of production and consumption on an equality with their competitors. *Lumber Rates Texas, etc., to Oklahoma and Missouri*, 471 (475, 476).

**COMPETITION—Continued.**

In the past there has been active and forceful competition for the carriage of sugar by water. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (487).

Rates to Memphis, Tenn., on coal dictated by water transportation down Mississippi River from the Pittsburgh, Pa. mines. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (536).

Justification for lower rates on imported burlap from New York to St. Louis than Memphis. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (546).

Due to competition grain rates to Chicago and Milwaukee from much of the intermediate territory between Minneapolis and Chicago and Milwaukee are higher than the so-called proportional rate upon which business moves from Minneapolis. *Grain Rates in C. F. A. Territory*, 549 (552).

Owing to competition of lines running east and west through Illinois and thence east to the Atlantic seaboard and lines running north and south and converging at Chicago, rates on grain to eastern destinations from points in Illinois were made the same from Chicago irrespective of distance. *Id.* 549 (555, 556).

Carrier not justified in increasing rate claimed to be unduly low which is established under compulsion of competitive conditions. *Id.* 549 (557).

While rates to Shreveport may be abnormal via circuitous routes due to competition this fact does not prove that the rates by the direct routes are abnormal. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (577).

Competition of east and west lines have no effect in maintaining lower class rates to Shreveport than to Texarkana. *Id.* 569 (578).

The history of class rates from St. Louis and defined territories to Shreveport indicates that these rates no longer reflect water competition. *Id.* 569 (577, 578).

Direct lines to Shreveport have depressed their rates to meet combinations through lower Mississippi River crossings. They can not be required to raise their rates in order to place Texarkana upon the same basis as Shreveport. *Id.* 569 (581).

Lower rate in effect to farther distance point forced by short-line competition, justified. *Thomas Iron Co. v. P. R. R. Co.* 608 (609).

American manufacturer of soda ash and bicarbonate of soda in active competition for sale in Canada with manufacturers in England. *Rates on Soda Ash and Other Commodities*, 613 (614).

Placing of east and west bound traffic on competitive basis as justification for difference in rates. *Hull Vehicle Co. v. S. Ry. Co.* 619 (620).

Blackstrap molasses from Mobile to St. Louis with beet refuse from Wisconsin and Michigan. *Molasses Rates from Mobile*, 666 (671).

Differential between Omaha and Kansas City to Arkansas fixed as a result of competition with Illinois and Iowa grain. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (685).

Dissimilarity of competitive conditions as defense to charge of unjust discrimination as between localities. *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (183).

Class rates from Atlantic seaboard to Chicago and St. Louis are reasonably low, and are product of acute competitive conditions. *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (233).

**COMPLAINTS.** See **AMENDMENT OF COMPLAINTS, HEARING, ISSUE, LIMITATION OF ACTION.**

**COMPRESSION.**

Cotton at Muskogee, Okla. *Birge-Forbes Co. v. M. K. & T. Ry. Co.* 409.

**CONCURRENCE.**

Carrier filed and posted tariff naming through rate to points on lines which was not named as a party and had not concurred. Charges collected on basis of combination of intermediates. Damages awarded. *Morton Salt Co. v. M. L. & T. R. R. & S. S. Co.* 422 (424).

While L. & N. concurred in import rates on burlap, there was no agreed divisions via its line. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (547).

**CONSIGNED ROUTINGS.**

In ripening season trainloads move to Jacksonville and Savannah where they are broken up and some of them go forward via water lines and others via Atlantic Coast Despatch. These movements are referred to as "consigned routings." *R. R. Com'rs of Fla. v. S. Exp. Co.* 634 (636).

**CONSTRUCTIVE MILEAGE.**

Mileages to various interior points are made upon constructive mileage allowed water carriers from Baltimore to Savannah, 250 miles, plus short line mileage from that port. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (162).

From New York to Savannah and Charleston, 250 miles; Boston to same ports, 300 miles; and from New York to Norfolk, 160 miles. *Atlanta Journal Co. v. S. A. L. Ry.* 186 (187).

Dividing the valuation placed upon the bridge by the assessed valuation of defendant's line in Iowa and Illinois, it appears that such valuation represents the assessed value of 66½ miles of line. *East Dubuque Supply Co. v. I. C. R. R. Co.* 425 (427).

**CONTINUOUS HAUL.**

Protestants allege that a continuous haul can not ordinarily be as expensive as combined local hauls with their additional terminal services. *Kansas-Iowa Brick Rates*, 285 (286).

**CONTRACT.**

Commission can have no control over contract between coal producer and his purchaser. In re *Weighing of Freight by Carriers*, 7 (25).

Commission has decided that percentage contract can not be accepted as basis for making rates. In re *Express Rates*, 132 (141).

The right and duties of these various carriers in the apportionment of available car supply must be determined from the act to regulate commerce and not from any contract which they may choose to make. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (505).

Between U. P. and O. S. L. and the Government with respect to shipments for account of Reclamation Service. *U. S. v. U. P. R. R. Co.* 518 (522).

Preferential contract given to complainant's competitor at Galveston, Tex., for wharfage facilities. Damages awarded. *Eichenberg v. S. P. Co.* 584.

Contract between P. M. and St. Paul roads can not be held as a valid objection to P. M. affording reconsignment service. *Becker v. P. M. R. R. Co.* 645 (655).

Manufacturers have contracted on basis of anticipated reduced rates. *Molasses Rates from Mobile*, 666 (671).

**COOLEY AWARD.**

Mentioned. *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (180, 183).

## CORN CROPS.

The average corn crop of Oklahoma is from 90,000,000 to 100,000,000 bushels. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (686).

## COST OF CONSTRUCTION.

As measure of rate. *National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co.* 215 (217).

## COST OF MAINTENANCE.

As measure of rate. *National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co.* 215 (217).

## COST OF PRODUCTION.

Difference in cost of production can not be recognized as a basis for the adjustment of freight rates between different localities. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 260 (262).

## COST OF SERVICE.

Allowances under section 15 must not be above reasonable cost of service performed by shipper. *Mfra. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (101).

The cost of handling business from Mississippi River where concentration of freight occurs, is less than from small interior stations, no justification for discrimination. *Iowa State Board of R. R. Com'rs v. A. E. R. R. Co.* 193 (200).

Element of cost should not be controlling. *Id.* 193 (200).

That shipper presented cotton in such form that carload lading could be doubled and cost of transportation correspondingly diminished, does not, as a matter of right, entitle him to lower rate. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (208).

As measure of rate. *National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co.* 215 (217).

Through business is less than that incident upon two intermediate hauls. *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (232).

Is material factor, but not only factor to be considered. *Id.* 230 (232).

Protestants allege that a continuous haul can not ordinarily be as expensive as combined local hauls with their additional terminal services. *Kansas-Iowa Brick Rates*, 285 (286).

The Rock Island avers that the cost of operation of its entire line has increased, but no details are given as to system as a whole or as to the particular lines here involved. *Id.* 285 (287).

This line, although separately operated, is by stock ownership a Rock Island property and can not be ignored since it affords opportunity for shorter hauls and reduced operating expenses with correspondingly increased revenue per ton-mile. *Id.* 285 (287).

No substantial difference in distance, in the cost of service, or in the handling of through shipments from trunk line or central freight association territories to Elgin and Aurora. *Elgin Commercial Club v. B. & M. R. R.* 380 (381).

Receipts show a deficit. *Detroit Switching Charges*, 494 (497).

Ferries mentioned. Rates on Coal to Milwaukee and Other Wisconsin Points, 527 (528).

Barging coal to Louisville, Ky., from Pittsburgh, Pa. Traffic Bureau of Nashville *v. L. & N. R. R. Co.* 533 (538).

Increased tractive power of locomotives is significant as tending to reduce the operating cost per unit of freight transported. *Id.* 533 (536).

## CLASSIFICATION—Continued.

Change in rating on cured meats in sacks from fourth to second class permitted. Rates on Packing-House Products, 599 (601).

Rate on prepared roofing in sheets should not exceed rate on same article in rolls. Patent Vulcanite Roofing Co. *v.* A. & W. Ry. Co. 610 (612).

Soda ash, caustic soda, and bicarbonate of soda. Rates on Soda Ash and other Commodities, 613.

Contention that description of wagon wood and plow beams in the rough until it has gone through a further process of manufacture amounts to classification not according to character but according to use. Sligo Iron Store Co. *v.* St. L. & S. F. R. R. Co. 616 (617).

Tendency of Commission has been to classify the various petroleum products to a limited extent. Fairmont Creamery Co. *v.* A. T. & S. F. Ry. Co. 661 (662).

Returned empty beer packages not found unreasonable. Minneapolis Brewing Co. *v.* A. T. & S. F. Ry. Co. 688.

## CLEANING CARS.

In connection with weight. In re Weighing of Freight by Carriers, 7 (19).

## CLIMATIC CONDITIONS.

As measure of rate. National Lumber Exporters' Asso. *v.* St. L. I. M. & S. Ry. Co. 215 (217).

## COASTWISE.

Lower rate in effect when traffic for coastwise or export destinations. Port Arthur Rice Milling Co. *v.* T. & F. S. Ry. Co. 697.

## C. O. D. SHIPMENTS.

Amount of c. o. d. bill for collection from a consignee shall be considered as declaration of value of shipments, unless greater value is declared. In re Express Rates, 132 (138).

## COMBINATION RATES.

Through charges based on sum of intermediate rates, but earnings on traffic, are not divided east and west of river on any such basis. Interior Iowa Cities Case, 64 (68).

Through rates to noncompetitive points made by combination of commodity rates to competitive points and local class rates beyond. Lagrange Chamber of Commerce *v.* A. & W. P. R. R. Co. 178 (181).

Rates from eastern points of origin to interior Iowa destinations are made by adding together the rate to Mississippi River and the rate from that river to destination. Iowa State Board of R. R. Com'rs. *v.* A. E. R. R. Co. 193 (194).

Rates from interior Iowa points to the west are made by adding together the local rate up to Missouri River and the rate from that river. *Id.* 193 (194).

Through tariffs are often constructed which are less than full combination of rates. *Id.* 193 (202).

Through rate from eastern destinations to Missouri River ought to be somewhat less than combination upon Mississippi River. Taylor Dry Goods Co. *v.* M. P. Ry. Co. 205 (213).

Rates from New England mills to Missouri River are made by combination upon Mississippi River. *Id.* 205 (213).

Ordinarily through rate should be less than combination of intermediates. Boston Chamber of Commerce *v.* A. T. & S. F. Ry. Co. 280 (282).

Carriers not justified in increasing factor where through rate exceeds sum of intermediate rates. California-Nevada Lumber Rates, 313 (315); Omaha-Oklahoma Fresh-Meat Rates, 454 (458).

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small injury to an average automobile will generally result in damages equal to or in excess of the revenue received for its use. *Keats Auto Co. v. O.-W. R. R. & N. Co.* 412 (413).

damages on unused transit grain shipped in under former practice at full rate to final destination and shipping out manufactured products. *Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.*

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entitled shippers to a just and reasonable transportation charge, and carriers have imposed upon these complainants rates in excess of what they have thereby damaged the complainants to that extent, for which reparation should be allowed. In re *Advances on Livestock*, 32 (335).

damages assessed on shipment of stocks and bonds on par value far in excess of actual value. *Acme Portland Cement Co. v. Am. Exp. Co.* 316.

Will not be awarded where claim is not based upon reasonableness of rate charged, but involved simply a question of tariff construction. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (215).

Combination rate assessed instead of joint rate with reconsigning privilege. *Mason Bros. v. S. P. Co.* 402.

Awarded on basis of error in tariff. *Morton Salt Co. v. M. L. & T. R. R. & S. S. Co.* 422.

To be awarded upon proof from date of promulgation of opinion declaring rates unreasonable. In re *Advances on Livestock*, 332.

#### **PARTIES.**

An award of reparation is due only from a carrier to a shipper and not to one carrier, as a carrier, from another. *Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (108).

Claim for reparation must come from shipper who pays rate and order must run against each carrier in the route. *Id.* 93 (108).

Rates found unreasonable; damages awarded. *Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co.* 701; *Silgo Iron Store Co. v. St. L. & S. F. R. R. Co.* 616 (618).

Rates found unreasonable; damages denied. *Interior Iowa Cities Case*, 64 (76); *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 76 (81); *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 82 (91); *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (172); *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (215); *Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co.* 237 (243); *Montezuma v. C. of G. Ry. Co.* 280 (284); *New England Electric Co. v. C. R. I. & P. Ry. Co.* 418 (421); *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (540).

Rates found unreasonable; damages to be awarded. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (214); *Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.* 274 (277, 278); In re *Advances on Livestock*, 332 (336); *American Brake Shoe & Foundry Co. v. B. Ry. of C.* 350 (353); *Marshall Oil Co. v. C. G. W. R. R. Co.* 707 (708).

Awarded on basis of overcharge. *United Refrigerator & Ice Machine Co. v. C. & N. W. Ry. Co.* 439.

To be awarded on basis of overcharge. *Bryant Co. v. Ft. W. & D. C. Ry. Co.* 594 (598).

**COST OF SERVICE—Continued.**

Gluten feed and mixed feed—by-products of grain—no greater than grain products. Grain Rates in C. F. A. Territory, 549 (553, 554).

Claim that to require Pa. to handle the cars of the Wabash for a switching charge reasonable as based upon the cost of service would be to give the use of those terminals to its competitor has great force. *Waverly Oil Works v. P. R. R. Co.* 621 (626).

Comparatively inexpensive for character of service desired for perishable freight by elimination of collection and delivery at points of origin and destination. *R. R. Com'rs of Fla. v. S. Exp. Co.* 634 (637).

Higher rates are charged on glucose than on other commodities that can not be transported at so low a cost as glucose. *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (674).

**COTTON PRODUCTION.**

One-seventh of the cotton crop of Georgia, or about 450,000 bales, is said to be produced within a radius of 50 miles of Pelham. *Town of Pelham v. A. C. L. R. R. Co.* 433 (437).

**CRATE BASIS.**

Rates on vegetables from producing points in Florida to northern points are made upon a crate basis. *Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.* 274.

**CROSS-COMPLAINANT.**

Mentioned. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (541).

**CUMULATIVE EVIDENCE.**

Only one witness for complainants and defendants; testimony of others would be cumulative. *Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co.* 688 (692).

**CUSTOMARY DELIVERIES.**

Term as used in tariff means ultimate destination. *Becker v. P. M. R. R. Co.* 645 (650).

**CUSTOMS.**

Blackstrap molasses gauged and tested by Revenue Officers in tank erected at port. *Molasses Rates from Mobile*, 666 (668).

**DAMAGES.****IN GENERAL.**

No award of reparation can properly be made pending an appeal to the Supreme Court of the United States. *Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.* 274 (279).

Damages denied, carrier not found to have unduly discriminated against complainant in distribution of cars. *National Coal Co. v. B. & O. R. R. Co.* 442 (444).

Damages denied on allegation that competitors were afforded free reconsignment at Milwaukee, there being no measure of damage. *Becker v. P. M. R. R. Co.* 645 (660).

Reconsignment charges assessed on cars as to which no notice was given prior to arrival of cars should be refunded. *Id.* 645 (659).

Demurrage assessed on cars held at Ludington instead of Milwaukee found to have been unjustifiable and damages awarded. *Id.* 645 (658, 659).

Damages denied on account of detention and changed conditions of market during dispute as to lawfulness of carriers holding cars at Ludington instead of Milwaukee. *Id.* 645 (657).

Damages awarded on basis of stipulated facts as to benefits accruing to complainant's competitor under preferential contract for wharfage facilities. *Eichenberg v. S. P. Co.* 584 (588).



**DAMAGES—Continued.**

**IN GENERAL—Continued.**

A comparatively small injury to an average automobile will generally result in damages equal to or in excess of the revenue received for its transportation. *Keats Auto Co. v. O.-W. R. R. & N. Co.* 412 (413).

Refund denied on unused transit grain shipped in under former practice of paying full rate to final destination and shipping out manufactured and by-products. *Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.* 364 (371).

The act entitled shippers to a just and reasonable transportation charge, and if these carriers have imposed upon these complainants rates in excess of this they have thereby damaged the complainants to that extent, for which reparation should be allowed. *In re Advances on Livestock*, 332 (335).

Charges assessed on shipment of stocks and bonds on par value far in excess of actual value. *Acme Portland Cement Co. v. Am. Exp. Co.* 316.

Will not be awarded where claim is not based upon reasonableness of rate charged, but involved simply a question of tariff construction. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (215).

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To be awarded on basis of overcharge. *Bryant Co. v. Ft. W. & D. C. Ry. Co.* 594 (598).

## COMPETITION—Continued.

As justification for granting fourth section application. In re Coal Rates from Anthracite Region to Points on New Haven Railroad, 235.

Does not exist between Montezuma and Dawson, Ga. *Montezuma v. C. of G. Ry. Co.* 280 (281).

Increase in rates in order to retire from traffic to competitive points rather than to sacrifice much-needed additional revenue on traffic to its intermediate local stations. *Kansas-Iowa Brick Rates*, 285 (286).

Rates to Louisville vary according to the grade of coal, whereas to Lebanon one rate governs the carriage of all grades. Not found unjustly discriminatory river and rail competition influencing rates. *Lebanon Commercial Club v. L. & N. R. R. Co.* 301 (304).

Neither to Carolina nor to southeastern territory are rates made primarily upon considerations of mileage, but chiefly in view of competitive forces focused at certain points where the paths of commerce and the routes of transportation meet. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (344).

Low commodity rates in effect from west to Augusta due to an effort to meet market competition of the East. *Id.* 339 (345).

Columbia as well as Augusta has competition to meet from Charleston and from Savannah, and its ability to meet this competition, so far as rates are concerned, is generally less than Augusta's on commodities from the East and on classes and commodities from Cincinnati-Louisville. *Id.* 339 (346).

Manufacturers and dealers at Elgin are in keen competition with manufacturers and dealers at Aurora. *Elgin Commercial Club v. B. & M. R. R.* 380 (381).

Rates from Ohio River crossings to Wilmington, N. C., defendants aver, are built with respect to strong and compelling competition through North Atlantic ports. *Boney & Harper Milling Co. v. A. C. L. R. R. Co.* 383 (387).

The complaining places are all in active competition with the near-by basing points and are adversely affected by the advantages which the latter enjoy in the matter of freight rates. *Town of Pelham v. A. C. L. R. R. Co.* 433 (438).

Douglas is at a material disadvantage in the competition for business of the region tributary to it and its neighboring rivals. It may not justly be denied relief from the handicap under which it labors, because of the circumstance that up to the present it has done well in spite of the handicap. *Mayor and Council of Douglas v. A. B. & A. R. R. Co.* 445 (450).

The rate to Douglas from the West is made up of the rate to Brunswick plus the rate from Brunswick back to Douglas. These rates are determined by competition of water lines from the eastern ports and rail lines through the Virginia gateways. *Id.* 445 (451).

The extent to which a carrier shall lower its rate to meet anticipated competition is a matter primarily for its decision, and should it later raise the rate, the sole question for our determination is whether that increased rate is just and reasonable for the service performed. *Scrap-Iron Rates Between Duluth and Chicago*, 467 (470).

In the hauls of the length here involved, ranging from 650 to 1,245 miles, a considerable addition in mileage could well be overlooked, especially where the necessity exists of maintaining points of production and consumption on an equality with their competitors. *Lumber Rates Texas, etc., to Oklahoma and Missouri*, 471 (475, 476).

## DIFFERENTIALS.

- When differentials are not disproportionate to differences in transportation conditions, higher rate on salt in packages than on salt in bulk not unreasonable. *Gottron Bros. Co. v. G. & W. R. R. Co.* 38 (42).
- Chicago rates over Mississippi and Missouri River rates. *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 82 (84).
- Above rates to basing points may be higher where long-haul traffic to local stations is meager. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (165).
- In making joint through rates on long-distance traffic to local or noncompetitive points, differentials above rates to basing points should bear some reasonable relation to total distances involved. *Id.* 154 (165).
- Sea and rail rates. *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 82 (90).
- Between all-rail and ocean-and-rail routes are result of competition between ocean carriers and trunk lines for control of traffic from eastern ports and interior eastern points to the Southeast. *Atlanta Journal Co. v. S. A. L. Ry.* 186 (188).
- To points between 500 and 600 miles from Sheridan the differentials suggested as compared with rates from Red Lodge should be decreased 10 cents, and for such 100 miles additional a further reduction of 10 cents should be made in the differential. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (264).
- Generally speaking, rates from all the river crossings to Columbia and Augusta are constructed with reference to through transportation from more distant points of origin. Differentials to the various crossings are the results of efforts by the carriers to equalize the through rates from any particular point of origin via any reasonably direct or practicable gateway on either river. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (341).
- St. Louis and Indianapolis on coffee and sugar. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (488).
- Same differential requested on imported burlaps between St. Louis and Memphis as in effect on class rates. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (546, 547).
- Class and commodity rates to Texarkana from certain territory are made by adding differentials to the rates from St. Louis or Kansas City, which are taken as basing rates. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (571).
- Rates to Texarkana upon commodities which to Shreveport take rates made on the lower Mississippi River crossings should not exceed those to the latter city by more than 6 cents. *Id.*, 569 (582).
- Rates from Alton to southern points may properly be made differentials over the rates from East St. Louis. *Alton Board of Trade v. C. & A. R. R. Co.* 589 (592).
- No fixed differential on coarse grain to Oklahoma, nor has there been a specific relation of rates, wheat as compared to coarse grain. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (681).
- Fact that uniform differentials are observed to other territories, while to Oklahoma the differences vary, furnishes, of itself, no justification for a change in the Oklahoma rates. May have some bearing in determining reasonableness. *Id.* 680 (685).
- Insufficient carriers named for Commission to undertake to settle so broad a question as that of the differential relation of Omaha and Kansas City. *Id.* 680 (681, 687).

**DIRECT LINE.** *See also* **CIRCUITOUS ROUTE.**

We can not properly allow an unreasonable rate by the direct line for the purpose of permitting the circuitous line to engage in the business at a reasonable profit. Grain Rates in C. F. A. territory, 549 (558).

Defendants allege that direct line should not be used in figuring comparative mileages because trains must be operated over heavy grades. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569 (572).

Texarkana rates should be regarded as maximum rates to all points intermediate via the direct lines from St. Louis, Kansas City and Memphis. Id. 569 (580).

**DIRECT ROUTING COMMITTEE.**

Shall study existing express routes and consider complaints of indirect or circuitous routing. In re Express Rates, 132 (136).

**DIRECTORY.**

Of express stations shall be issued not later than October 15, 1913, when block system of stating rates and new rates become effective. In re Express Rates, 132 (136).

**DISADVANTAGES.** *See* **COMMERCIAL AND ECONOMIC CONDITIONS; DISCRIMINATION; LOCATION; PREFERENCE AND PREJUDICES.****DISCRIMINATION.** *See also* **PREFERENCES AND PREJUDICES.**

Higher rate on salt in packages than on salt in bulk held to be neither unreasonable nor unduly discriminatory when differentials are not disproportionate to difference in transportation conditions. Gottron Bros. Co. v. G. & W. R. R. Co. 38 (42).

Section 2 embodies the phrase, "under substantially similar circumstances and conditions," but this might be included in words "in any respect whatsoever;" contained in section 3. Board of Trade of Carrollton v. C. of G. Ry. Co. 154 (167, 168).

Fifth-class rating on sulphate of potash and muriate of potash in carloads not found unjustly discriminatory as compared with class-E on kainit and other fertilizers in carloads. German Kali Works, Inc. v. A. T. & S. F. Ry. Co. 223.

Not necessarily a discrimination to disregard rule that rate per ton-mile shall decrease as distance increases. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co. 230 (232).

Carriers practices in granting free transportation under section 22 must not result in unjust discrimination under section 2. Dairymen's Supply Co. v. P. R. R. Co. 406 (408).

Sugar and coffee are not like kinds of traffic, within the meaning of section 2. Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co. 484 (487).

Refusal to allow one-fourth of one cent for the elevation and transfer of barley converted into malt does not result in unjust discrimination. Milwaukee Maltsters' Traffic Asso. v. G. T. W. Ry. Co. 489.

The C. & S. E., which is a plant facility of the Victor-American mines operates by trackage agreement over lines of other carriers. The inclusion of the mines of the C. & S. E. in the ratings of the D. & R. G and C. & S. R. R. works an undue discrimination. Huerfano Coal Co. v. C. & S. E. R. R. Co. 502 (507).

Where an increase in rates may operate or create or increase a discrimination it is always necessary to inquire in passing upon the propriety of the increase whether the discrimination be undue. Grain Rates in C. F. A. Territory, 549 (557).

**DISCRIMINATION—Continued.**

Undue discrimination to impose higher charge for the transportation of prepared roofing in sheets than in rolls. *Patent Vulcanite Roofing Co. v. A. & W. Ry. Co.* 610 (612).

Discriminatory to force wagon wood and plow beams, in the rough, to bear higher rates than are imposed for like service upon many analogous manufactured wood articles which move at lumber rates. *Sligo Iron Store Co. v. St. L. & S. F. R. R. Co.* 616 (618).

Discriminatory practice of leasing elevators at unduly low rental or operating same through subsidiary corporations discontinued. *Omaha Grain Exchange v. A. T. & S. F. Ry. Co.* 664.

Proposed rate opposed because it would discriminate in favor of one shipper, who is building tank facilities in which to receive commodity. *Molasses Rates from Mobile*, 666 (667).

No discrimination shown for defendants to refuse to accept shipments of roofing tile with directions to notify parties elsewhere than at destination points. *Ludowici-Celadon Co. v. A. C. L. R. R. Co.* 693 (695).

**DISMISSAL.**

Complaint against A. C. L. and Sanford & Everglades R. R. Co. with respect to joint rates dismissed upon motion of complainant. *R. R. Com'rs. of Fla. v. A. C. L. R. R. Co.* 356 (359).

Discriminatory practice of leasing elevators at unduly low rental or operating same through subsidiary corporations discontinued, complaint dismissed on motion of parties. *Omaha Grain Exchange v. A. T. & S. F. Ry. Co.* 664.

**DISTANCE.**

Rate per ton per mile should decrease as haul increases. *Gotttron Bros. Co. v. G. & W. R. R. Co.* 38 (45).

Fundamental maxim that rate per ton-mile shall decrease as distance increases, but to disregard rule is not of necessity a discrimination. *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (232).

Basis of rates. *Mississippi River Case*, 47 (61).

In making joint through rates on long-distance traffic to local or non-competitive points, differentials above rates to basing points should bear some reasonable relation to total distances involved. *Board of trade of Carrollton v. C. of G. Ry. Co.* 154 (165).

To point upon edge of territorial group may be found which would not be fairly comparable with average distance from entire group from which rate applied. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 193 (195).

Differentials established for different distances. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (264).

Difference of 32 miles on hauls ranging from 600 to 1,000 miles, negligible. *Montezuma v. C. of G. Ry. Co.* 280 (282).

Neither to Carolina nor to Southeastern territory are rates made primarily upon considerations of mileage, but chiefly in view of competitive forces focused at certain points where the paths of commerce and the routes of transportation meet. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (344).

Relative unreasonableness is not proven here by comparisons of distances. *Boney & Harper Milling Co. v. A. C. L. R. R. Co.* 383 (388).

**DISTANCE—Continued.**

In the hauls of the length here involved, ranging from 650 to 1,245 miles, a considerable addition in mileage could well be overlooked, especially where the necessity exists of maintaining points of production and consumption on an equality with their competitors. *Lumber Rates Texas etc., to Oklahoma and Missouri*, 471 (475, 476).

Percentage rates are based upon distance. Rates to the various percentage groups are determined by short-line mileage to the more important points located within those groups. *Springfield Commercial Asso. v. P. R. R. Co.* 511 (512).

Distance is an important element in determining whether routings are or would be satisfactory, and in these proceedings this element weighs against the establishment of the proposed routes. *U. S. v. U. P. R. R. Co.* 518 (522).

Class rates prescribed which preserved relation between the different classes at all distances. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 563 (566).

Violation of section four based on fact that from points of origin to Texarkana the distance is less to Texarkana than to Shreveport. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (572).

**DISTANCE TARIFF.**

Application of interstate distance tariff on grain instead of Iowa distance tariff, not justified. *Iowa Grain Rates*, 354.

**DISTURBANCE OF ADJUSTMENT. See also ADJUSTMENT OF RATES.**

Establishing carload rating would throw out of balance the relation of rates on cotton piece goods in all parts of the country. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (210).

Before condemning the exchange regulation—acceptance of mileage coupons on trains for transportation—the Commission must be prepared to condemn it everywhere in the United States. *In re Mileage Books*, 318 (323).

Carriers urged that any reduction in the rates to Columbia would be reflected by reductions in the rates to places farther removed from the coast in Carolina territory and that such diminutions in their revenues as would result therefrom would be greater than they can afford. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (343).

While sensible of the difficulties and possible burdens which readjustment may cause, we can not withhold the relief which the facts of the complaint seem in justice to require. *Mayor and Council of Douglas v. A. B. & A. R. R. Co.* 445 (453).

Record not comprehensive enough to justify. *Wausau Advancement Asso. v. C. & N. W. Ry. Co.* 459 (461).

No other manufacturers having joined in the complaint, or made independent complaint, it is possible that they may be materially affected by a disturbance of adjustment that has continued for so many years. *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (675).

**DIVERSION.**

On account of congested condition and heavy passenger-train service, it is necessary to divert traffic from short line. *Chicago Switching Charges*, 677 (679).

Shipment diverted while en route from Newport, Ky., to Portsmouth, Ohio. *Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co.* 703 (704).

**DIVISION OF RATES.**

Shipper pays for complete service, and has no concern as to how through charges are divided among carriers. *Interior Iowa Cities Case*, 64 (78).

**DIVISION OF RATES—Continued.**

Although through charges based on sum of intermediate rates, earnings on traffic are not divided east and west of river on any such basis. *Id.* 64 (68).

May be prescribed by order of Commission. *Mfra. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (103).

Payments made out of through rates by trunk lines to *Mfra. Ry.* were absorptions in compensation for services rendered trunk lines, and not divisions of joint rates for services rendered shippers. *Id.* 93 (105).

No part of division of joint rates accruing to the *Mfra. Ry.* will be borne by the trunk lines. *Id.* 93 (106).

Question of divisions is quite apart from that of the reasonableness of a joint rate. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (255).

Generally true that a carrier may reasonably accept less than its local rate as its division of a joint rate. *Sandstone, Minn.—Missouri River Building Stone Rates*, 269 (273).

Mere failure to agree upon divisions of joint rates, which rates are admitted to be reasonable, will not be accepted as justification for an increase. *New Mexico Coal Rates*, 328 (329); *Chicago Lighterage Charges*, 390 (392); *Oklahoma Grain Rates*, 462; *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (642).

Through rate reduced, but division received by steamboat line not found excessive. *R. R. Com'rs. of Fla. v. A. C. L. R. R. Co.* 356 (358).

While *L. & N.* concurred in import rates on burlap, there was no agreed divisions via its line. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (547).

That divisions of through rate must be made with one and sometimes two additional lines justifies higher rates from Alton than East St. Louis to Henderson and Owensboro, Ky. *Alton Board of Trade v. C. & A. R. R. Co.*, 589 (592).

Line performing terminal service entitled to greater division than line relieved of such service. *Waverly Oil Works v. P. R. R. Co.* 621 (631).

Lines from New Orleans to St. Louis shrink their divisions for benefit of lines west of New Orleans. *Molasses Rates from Mobile*, 666 (671).

**DOUBLE-DECK CARS.**

Manufacturers and dealers frequently ship automobiles in carloads by double-decking the cars, but it was testified that it is not feasible for the carriers to do this, or to make use of the space above one or more automobiles in a single car. *Keats Auto Co. v. O-W. R. R. & N. Co.* 412 (413).

**DOUBLE-SACKING.**

Arrangement made for double-sacking and storing of export rice at port. *Port Arthur Rice Milling Co. v. T. & F. S. Ry. Co.* 697 (700).

**DUTY OF CARRIER.**

Reconsignment is a service which the carrier may, under the act, be properly expected to furnish. *Becker v. P. M. R. R. Co.* 645 (655).

**DRAYAGE.**

Absorption of, for handling coffee from shipside to cars. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (486).

Drayage service performed by company that has no equipment, but engages another transfer company to do the work paying the full allowance received by the railway. *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (642).

**DEAD FREIGHT.**

Railroads move scrap iron at their convenience, it being considered low grade or dead freight. *Scrap Iron Between Duluth and Chicago*, 467 (468).

**DELAY.**

Reconsignment required because of unusual delays in the movement of coal. *Becker v. P. M. R. R. Co.* 645 (646).

**DELIVERY.**

Respondents shall be required to issue a joint publication wherein the established pick-up and delivery limits shall be specifically defined. *In re Express Rates*, 132.

From Boston to Haverhill, Mass., via Windham, N. H., a distance of sixty-eight miles, delivery would not be made until the morning of the fifth day, owing to transfer of car from train to train. *Haverhill Box Board Co. v. B. & A. R. R. Co.* 336 (337).

By lake boat lines and lighterage companies. *Chicago Lighterage Charges*, 390.

In absence of tariff provision to the contrary rates to a given point include delivery only on a carrier's own rails. *Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co.* 703 (705).

**DEMURRAGE. See also FREE TIME.**

If car weighed twice, with different results, shipper should be allowed, without liability to demurrage charges, sufficient time in which to examine weight of car before it is unloaded. *In re Weighing of Freight by Carriers*, 7 (36).

Per diem reclaims in connection with. *Mfra. Ry. Co. v. St. L. M. & S. Ry. Co. (con.)* 93 (116).

We see no difference between free demurrage time and free storage time as used in these tariffs. *New Orleans Storage Rules and Regulations*, 605 (607).

Whether reconsignment is free or at a charge, cars held past free time allowed, are subject to demurrage or car-service charges. *Becker v. P. M. R. R. Co.* 645 (655).

Demurrage assessed on cars held at Ludington instead of Milwaukee found to have been unjustifiable and damages awarded. *Id.* 645 (658, 659).

Demurrage charges not found to have been result of carrier's negligence in routing. *Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co.* 703 (705).

**DENSITY OF TRAFFIC. See also Volume of Traffic.**

As justification of different rates as between upper and lower crossings. *Mississippi River Case*, 47 (55).

Where long-haul traffic to local stations is meager, differentials above rates to basing points, may be higher than otherwise. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154.

Commission recognizes right of western carriers to maintain higher classification and higher rates than prevail in the East. *German Kali Works Inc. v. A. T. & S. F. Ry. Co.* 223 (224); *Iowa State Board of R. R. Com'rs v. A. E. R. R. Co.* 563 (568); *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (676).

**DEPOT.**

Respondents should provide receiving depot for oysters in section of city in which complainants are located. *Atlantic Packing Co. v. Am. Exp. Co.* 244 (246).



**CORN CROPS.**

The average corn crop of Oklahoma is from 90,000,000 to 100,000,000 bushels. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 690 (686).

**COST OF CONSTRUCTION.**

As measure of rate. *National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co.* 215 (217).

**COST OF MAINTENANCE.**

As measure of rate. *National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co.* 215 (217).

**COST OF PRODUCTION.**

Difference in cost of production can not be recognized as a basis for the adjustment of freight rates between different localities. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (262).

**COST OF SERVICE.**

Allowances under section 15 must not be above reasonable cost of service performed by shipper. *Mfra. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (101).

The cost of handling business from Mississippi River where concentration of freight occurs, is less than from small interior stations, no justification for discrimination. *Iowa State Board of R. R. Com'rs v. A. E. R. R. Co.* 193 (200).

Element of cost should not be controlling. *Id.* 193 (200).

That shipper presented cotton in such form that carload lading could be doubled and cost of transportation correspondingly diminished, does not, as a matter of right, entitle him to lower rate. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (208).

As measure of rate. *National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co.* 215 (217).

Through business is less than that incident upon two intermediate hauls. *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (232).

Is material factor, but not only factor to be considered. *Id.* 230 (232).

Protestants allege that a continuous haul can not ordinarily be as expensive as combined local hauls with their additional terminal services. *Kansas-Iowa Brick Rates*, 285 (286).

The Rock Island avers that the cost of operation of its entire line has increased, but no details are given as to system as a whole or as to the particular lines here involved. *Id.* 285 (287).

This line, although separately operated, is by stock ownership a Rock Island property and can not be ignored since it affords opportunity for shorter hauls and reduced operating expenses with correspondingly increased revenue per ton-mile. *Id.* 285 (287).

No substantial difference in distance, in the cost of service, or in the handling of through shipments from trunk line or central freight association territories to Elgin and Aurora. *Elgin Commercial Club v. B. & M. R. R.* 380 (381).

Receipts show a deficit. *Detroit Switching Charges*, 494 (497).

Ferries mentioned. Rates on Coal to Milwaukee and Other Wisconsin Points, 527 (528).

Bargain coal to Louisville, Ky., from Pittsburgh, Pa. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (538).

Increased tractive power of locomotives is significant as tending to reduce the operating cost per unit of freight transported. *Id.* 533 (538).

**COST OF SERVICE—Continued.**

Gluten feed and mixed feed—by-products of grain—no greater than grain products. Grain Rates in C. F. A. Territory, 549 (553, 554).

Claim that to require Pa. to handle the cars of the Wabash for a switching charge reasonable as based upon the cost of service would be to give the use of those terminals to its competitor has great force. *Waverly Oil Works v. P. R. R. Co.* 621 (626).

Comparatively inexpensive for character of service desired for perishable freight by elimination of collection and delivery at points of origin and destination. *R. R. Com'rs of Fla. v. S. Exp. Co.* 634 (637).

Higher rates are charged on glucose than on other commodities that can not be transported at so low a cost as glucose. *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (674).

**COTTON PRODUCTION.**

One-seventh of the cotton crop of Georgia, or about 450,000 bales, is said to be produced within a radius of 50 miles of Pelham. *Town of Pelham v. A. C. L. R. R. Co.* 433 (437).

**CRATE BASIS.**

Rates on vegetables from producing points in Florida to northern points are made upon a crate basis. *Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.* 274.

**CROSS-COMPLAINANT.**

Mentioned. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (541).

**CUMULATIVE EVIDENCE.**

Only one witness for complainants and defendants; testimony of others would be cumulative. *Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co.* 688 (692).

**CUSTOMARY DELIVERIES.**

Term as used in tariff means ultimate destination. *Becker v. P. M. R. R. Co.* 645 (650).

**CUSTOMS.**

Blackstrap molasses gauged and tested by Revenue Officers in tank erected at port. Molasses Rates from Mobile, 666 (668).

**DAMAGES.****IN GENERAL.**

No award of reparation can properly be made pending an appeal to the Supreme Court of the United States. *Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.* 274 (279).

Damages denied, carrier not found to have unduly discriminated against complainant in distribution of cars. *National Coal Co. v. B. & O. R. R. Co.* 442 (444).

Damages denied on allegation that competitors were afforded free reconsignment at Milwaukee, there being no measure of damage. *Becker v. P. M. R. R. Co.* 645 (660).

Reconsignment charges assessed on cars as to which no notice was given prior to arrival of cars should be refunded. *Id.* 645 (659).

Demurrage assessed on cars held at Ludington instead of Milwaukee found to have been unjustifiable and damages awarded. *Id.* 645 (658, 659).

Damages denied on account of detention and changed conditions of market during dispute as to lawfulness of carriers holding cars at Ludington instead of Milwaukee. *Id.* 645 (657).

Damages awarded on basis of stipulated facts as to benefits accruing to complainant's competitor under preferential contract for wharfage facilities. *Richenberg v. S. P. Co.* 584 (588).

**DAMAGES—Continued.****IN GENERAL—Continued.**

A comparatively small injury to an average automobile will generally result in damages equal to or in excess of the revenue received for its transportation. *Keats Auto Co. v. O.-W. R. R. & N. Co.* 412 (413).

Refund denied on unused transit grain shipped in under former practice of paying full rate to final destination and shipping out manufactured and by-products. *Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.* 364 (371).

The act entitled shippers to a just and reasonable transportation charge, and if these carriers have imposed upon these complainants rates in excess of this they have thereby damaged the complainants to that extent, for which reparation should be allowed. In re *Advances on Livestock*, 332 (335).

Charges assessed on shipment of stocks and bonds on par value far in excess of actual value. *Acme Portland Cement Co. v. Am. Exp. Co.* 316.

Will not be awarded where claim is not based upon reasonableness of rate charged, but involved simply a question of tariff construction. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (215).

Combination rate assessed instead of joint rate with reconsigning privilege. *Mason Bros. v. S. P. Co.* 402.

Awarded on basis of error in tariff. *Morton Salt Co. v. M. L. & T. R. R. & S. S. Co.* 422.

To be awarded upon proof from date of promulgation of opinion declaring rates unreasonable. In re *Advances on Livestock*, 332.

**PARTIES.**

An award of reparation is due only from a carrier to a shipper and not to one carrier, as a carrier, from another. *Mfra. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (108).

Claim for reparation must come from shipper who pays rate and order must run against each carrier in the route. *Id.* 93 (108).

Rates found unreasonable; damages awarded. *Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co.* 701; *Sligo Iron Store Co. v. St. L. & S. F. R. R. Co.* 616 (618).

Rates found unreasonable; damages denied. *Interior Iowa Cities Case*, 64 (76); *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 76 (81); *Colorado Mfra. Asso. v. A. T. & S. F. Ry. Co.* 82 (91); *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (172); *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (215); *Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co.* 237 (243); *Montezuma v. C. of G. Ry. Co.* 280 (284); *New England Electric Co. v. C. R. I. & P. Ry. Co.* 418 (421); *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (540).

Rates found unreasonable; damages to be awarded. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (214); *Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.* 274 (277, 278); In re *Advances on Livestock*, 332 (336); *American Brake Shoe & Foundry Co. v. B. Ry. of C.* 350 (353); *Marshall Oil Co. v. C. G. W. R. R. Co.* 707 (708).

Awarded on basis of overcharge. *United Refrigerator & Ice Machine Co. v. C. & N. W. Ry. Co.* 439.

To be awarded on basis of overcharge. *Bryant Co. v. Ft. W. & D. C. Ry. Co.* 594 (598).

**DEAD FREIGHT.**

Railroads move scrap iron at their convenience, it being considered low grade or dead freight. *Scrap Iron Between Duluth and Chicago*, 467 (468).

**DELAY.**

Reconsignment required because of unusual delays in the movement of coal. *Becker v. P. M. R. R. Co.* 645 (646).

**DELIVERY.**

Respondents shall be required to issue a joint publication wherein the established pick-up and delivery limits shall be specifically defined. In re Express Rates, 132.

From Boston to Haverhill, Mass., via Windham, N. H., a distance of sixty-eight miles, delivery would not be made until the morning of the fifth day, owing to transfer of car from train to train. *Haverhill Box Board Co. v. B. & A. R. R. Co.* 836 (837).

By lake boat lines and lighterage companies. *Chicago Lighterage Charges*, 390.

In absence of tariff provision to the contrary rates to a given point include delivery only on a carrier's own rails. *Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co.* 708 (705).

**DEMURRAGE. See also FREE TIME.**

If car weighed twice, with different results, shipper should be allowed, without liability to demurrage charges, sufficient time in which to examine weight of car before it is unloaded. In re Weighing of Freight by Carriers, 7 (36).

Per diem reclaims in connection with. *Mfra. Ry. Co. v. St. L. I. M. & S. Ry. Co. (con.)* 93 (116).

We see no difference between free demurrage time and free storage time as used in these tariffs. *New Orleans Storage Rules and Regulations*, 605 (607).

Whether reconsignment is free or at a charge, cars held past free time allowed, are subject to demurrage or car-service charges. *Becker v. P. M. R. R. Co.* 645 (655).

Demurrage assessed on cars held at Ludington instead of Milwaukee found to have been unjustifiable and damages awarded. *Id.* 645 (658, 659).

Demurrage charges not found to have been result of carrier's negligence in routing. *Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co.* 708 (705).

**DENSITY OF TRAFFIC. See also Volume of Traffic.**

As justification of different rates as between upper and lower crossings. *Mississippi River Case*, 47 (55).

Where long-haul traffic to local stations is meager, differentials above rates to basing points, may be higher than otherwise. *Board of Trade of Car-rollton v. C. of G. Ry. Co.* 154.

Commission recognizes right of western carriers to maintain higher classification and higher rates than prevail in the East. *German Kali Works, Inc. v. A. T. & S. F. Ry. Co.* 223 (224); *Iowa State Board of R. R. Com'rs v. A. E. R. R. Co.* 563 (568); *National Syrup Co. v. C. & N. W. Ry. Co.* 678 (676).

**DEPOT.**

Respondents should provide receiving depot for oysters in section of city in which complainants are located. *Atlantic Packing Co. v. Am. Exp. Co.* 244 (246).

## DIFFERENTIALS.

When differentials are not disproportionate to differences in transportation conditions, higher rate on salt in packages than on salt in bulk not unreasonable. *Gotttron Bros. Co. v. G. & W. R. R. Co.* 38 (42).

Chicago rates over Mississippi and Missouri River rates. *Colorado Mfra. Asso. v. A. T. & S. F. Ry. Co.* 82 (84).

Above rates to basing points may be higher where long-haul traffic to local stations is meager. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (165).

In making joint through rates on long-distance traffic to local or noncompetitive points, differentials above rates to basing points should bear some reasonable relation to total distances involved. *Id.* 154 (165).

Sea and rail rates. *Colorado Mfra. Asso. v. A. T. & S. F. Ry. Co.* 82 (90).

Between all-rail and ocean-and-rail routes are result of competition between ocean carriers and trunk lines for control of traffic from eastern ports and interior eastern points to the Southeast. *Atlanta Journal Co. v. S. A. L. Ry.* 186 (188).

To points between 500 and 600 miles from Sheridan the differentials suggested as compared with rates from Red Lodge should be decreased 10 cents, and for such 100 miles additional a further reduction of 10 cents should be made in the differential. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (264).

Generally speaking, rates from all the river crossings to Columbia and Augusta are constructed with reference to through transportation from more distant points of origin. Differentials to the various crossings are the results of efforts by the carriers to equalize the through rates from any particular point of origin via any reasonably direct or practicable gateway on either river. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (341).

St. Louis and Indianapolis on coffee and sugar. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (488).

Same differential requested on imported burlaps between St. Louis and Memphis as in effect on class rates. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (546, 547).

Class and commodity rates to Texarkana from certain territory are made by adding differentials to the rates from St. Louis or Kansas City, which are taken as basing rates. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (571).

Rates to Texarkana upon commodities which to Shreveport take rates made on the lower Mississippi River crossings should not exceed those to the latter city by more than 6 cents. *Id.*, 569 (582).

Rates from Alton to southern points may properly be made differentials over the rates from East St. Louis. *Alton Board of Trade v. C. & A. R. R. Co.* 589 (592).

No fixed differential on coarse grain to Oklahoma, nor has there been a specific relation of rates, wheat as compared to coarse grain. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (681).

Fact that uniform differentials are observed to other territories, while to Oklahoma the differences vary, furnishes, of itself, no justification for a change in the Oklahoma rates. May have some bearing in determining reasonableness. *Id.* 680 (685).

Insufficient carriers named for Commission to undertake to settle so broad a question as that of the differential relation of Omaha and Kansas City. *Id.* 680 (681, 687).

**DIRECT LINE.** *See also* **CIRCUITOUS ROUTE.**

We can not properly allow an unreasonable rate by the direct line for the purpose of permitting the circuitous line to engage in the business at a reasonable profit. Grain Rates in C. F. A. territory, 549 (558).

Defendants allege that direct line should not be used in figuring comparative mileages because trains must be operated over heavy grades. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569 (572).

Texarkana rates should be regarded as maximum rates to all points intermediate via the direct lines from St. Louis, Kansas City and Memphis. Id. 569 (580).

**DIRECT ROUTING COMMITTEE.**

Shall study existing express routes and consider complaints of indirect or circuitous routing. In re Express Rates, 132 (136).

**DIRECTORY.**

Of express stations shall be issued not later than October 15, 1913, when block system of stating rates and new rates become effective. In re Express Rates, 132 (136).

**DISADVANTAGES.** *See* **COMMERCIAL AND ECONOMIC CONDITIONS; DISCRIMINATION; LOCATION; PREFERENCE AND PREJUDICES.****DISCRIMINATION.** *See also* **PREFERENCES AND PREJUDICES.**

Higher rate on salt in packages than on salt in bulk held to be neither unreasonable nor unduly discriminatory when differentials are not disproportionate to difference in transportation conditions. Gottron Bros. Co. v. G. & W. R. R. Co. 38 (42).

Section 2 embodies the phrase, "under substantially similar circumstances and conditions," but this might be included in words "in any respect whatsoever;" contained in section 3. Board of Trade of Carrollton v. C. of G. Ry. Co. 154 (167, 168).

Fifth-class rating on sulphate of potash and muriate of potash in carloads not found unjustly discriminatory as compared with class-E on kainit and other fertilizers in carloads. German Kali Works, Inc. v. A. T. & S. F. Ry. Co. 223.

Not necessarily a discrimination to disregard rule that rate per ton-mile shall decrease as distance increases. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co. 230 (232).

Carriers practices in granting free transportation under section 22 must not result in unjust discrimination under section 2. Dairymen's Supply Co. v. P. R. R. Co. 406 (408).

Sugar and coffee are not like kinds of traffic, within the meaning of section 2. Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co. 484 (487).

Refusal to allow one-fourth of one cent for the elevation and transfer of barley converted into malt does not result in unjust discrimination. Milwaukee Maltsters' Traffic Asso. v. G. T. W. Ry. Co. 489.

The C. & S. E., which is a plant facility of the Victor-American mines operates by trackage agreement over lines of other carriers. The inclusion of the mines of the C. & S. E. in the ratings of the D. & R. G. and C. & S. R. R. works an undue discrimination. Huerfano Coal Co. v. C. & S. E. R. R. Co. 502 (507).

Where an increase in rates may operate or create or increase a discrimination it is always necessary to inquire in passing upon the propriety of the increase whether the discrimination be undue. Grain Rates in C. F. A. Territory, 549 (557).

**DISCRIMINATION—Continued.**

Undue discrimination to impose higher charge for the transportation of prepared roofing in sheets than in rolls. *Patent Vulcanite Roofing Co. v. A. & W. Ry. Co.* 610 (612).

Discriminatory to force wagon wood and plow beams, in the rough, to bear higher rates than are imposed for like service upon many analogous manufactured wood articles which move at lumber rates. *Sligo Iron Store Co. v. St. L. & S. F. R. R. Co.* 616 (618).

Discriminatory practice of leasing elevators at unduly low rental or operating same through subsidiary corporations discontinued. *Omaha Grain Exchange v. A. T. & S. F. Ry. Co.* 664.

Proposed rate opposed because it would discriminate in favor of one shipper, who is building tank facilities in which to receive commodity. *Molasses Rates from Mobile*, 666 (667).

No discrimination shown for defendants to refuse to accept shipments of roofing tile with directions to notify parties elsewhere than at destination points. *Ludowici-Celadon Co. v. A. C. L. R. R. Co.* 693 (695).

**DISMISSAL.**

Complaint against A. C. L. and Sanford & Everglades R. R. Co. with respect to joint rates dismissed upon motion of complainant. *R. R. Com'rs. of Fla. v. A. C. L. R. R. Co.* 356 (359).

Discriminatory practice of leasing elevators at unduly low rental or operating same through subsidiary corporations discontinued, complaint dismissed on motion of parties. *Omaha Grain Exchange v. A. T. & S. F. Ry. Co.* 664.

**DISTANCE.**

Rate per ton per mile should decrease as haul increases. *Gottroen Bros. Co. v. G. & W. R. R. Co.* 38 (45).

Fundamental maxim that rate per ton-mile shall decrease as distance increases, but to disregard rule is not of necessity a discrimination. *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (232).

Basis of rates. *Mississippi River Case*, 47 (61).

In making joint through rates on long-distance traffic to local or non-competitive points, differentials above rates to basing points should bear some reasonable relation to total distances involved. *Board of trade of Carrollton v. C. of G. Ry. Co.* 154 (165).

To point upon edge of territorial group may be found which would not be fairly comparable with average distance from entire group from which rate applied. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 193 (195).

Differentials established for different distances. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (264).

Difference of 32 miles on hauls ranging from 600 to 1,000 miles, negligible. *Montezuma v. C. of G. Ry. Co.* 280 (282).

Neither to Carolina nor to Southeastern territory are rates made primarily upon considerations of mileage, but chiefly in view of competitive forces focused at certain points where the paths of commerce and the routes of transportation meet. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (344).

Relative unreasonableness is not proven here by comparisons of distances. *Boney & Harper Milling Co. v. A. C. L. R. R. Co.* 383 (388).

**DISTANCE—Continued.**

In the hauls of the length here involved, ranging from 650 to 1,245 miles, a considerable addition in mileage could well be overlooked, especially where the necessity exists of maintaining points of production and consumption on an equality with their competitors. *Lumber Rates Texas etc., to Oklahoma and Missouri*, 471 (475, 476).

Percentage rates are based upon distance. Rates to the various percentage groups are determined by short-line mileage to the more important points located within those groups. *Springfield Commercial Asso. v. P. R. R. Co.* 511 (512).

Distance is an important element in determining whether routings are or would be satisfactory, and in these proceedings this element weighs against the establishment of the proposed routes. *U. S. v. U. P. R. R. Co.* 518 (522).

Class rates prescribed which preserved relation between the different classes at all distances. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 563 (566).

Violation of section four based on fact that from points of origin to Texarkana the distance is less to Texarkana than to Shreveport. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (572).

**DISTANCE TARIFF.**

Application of interstate distance tariff on grain instead of Iowa distance tariff, not justified. *Iowa Grain Rates*, 354.

**DISTURBANCE OF ADJUSTMENT. See also ADJUSTMENT OF RATES.**

Establishing carload rating would throw out of balance the relation of rates on cotton piece goods in all parts of the country. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (210).

Before condemning the exchange regulation—acceptance of mileage coupons on trains for transportation—the Commission must be prepared to condemn it everywhere in the United States. *In re Mileage Books*, 318 (323).

Carriers urged that any reduction in the rates to Columbia would be reflected by reductions in the rates to places farther removed from the coast in Carolina territory and that such diminutions in their revenues as would result therefrom would be greater than they can afford. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (343).

While sensible of the difficulties and possible burdens which readjustment may cause, we can not withhold the relief which the facts of the complaint seem in justice to require. *Mayor and Council of Douglas v. A. B. & A. R. R. Co.* 445 (453).

Record not comprehensive enough to justify. *Wausau Advancement Asso. v. C. & N. W. Ry. Co.* 459 (461).

No other manufacturers having joined in the complaint, or made independent complaint, it is possible that they may be materially affected by a disturbance of adjustment that has continued for so many years. *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (675).

**DIVERSION.**

On account of congested condition and heavy passenger-train service, it is necessary to divert traffic from short line. *Chicago Switching Charges*, 677 (679).

Shipment diverted while en route from Newport, Ky., to Portsmouth, Ohio. *Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co.* 703 (704).

**DIVISION OF RATES.**

Shipper pays for complete service, and has no concern as to how through charges are divided among carriers. *Interior Iowa Cities Case*, 64 (73).



**DIVISION OF RATES—Continued.**

Although through charges based on sum of intermediate rates, earnings on traffic are not divided east and west of river on any such basis. *Id.* 64 (68).

May be prescribed by order of Commission. *Mfra. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (103).

Payments made out of through rates by trunk lines to *Mfra. Ry.* were absorptions in compensation for services rendered trunk lines, and not divisions of joint rates for services rendered shippers. *Id.* 93 (105).

No part of division of joint rates accruing to the *Mfra. Ry.* will be borne by the trunk lines. *Id.* 93 (106).

Question of divisions is quite apart from that of the reasonableness of a joint rate. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (255).

Generally true that a carrier may reasonably accept less than its local rate as its division of a joint rate. *Sandstone, Minn.—Missouri River Building Stone Rates*, 269 (273).

Mere failure to agree upon divisions of joint rates, which rates are admitted to be reasonable, will not be accepted as justification for an increase. *New Mexico Coal Rates*, 328 (329); *Chicago Lighterage Charges*, 390 (392); *Oklahoma Grain Rates*, 462; *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (642).

Through rate reduced, but division received by steamboat line not found excessive. *R. R. Com'rs. of Fla. v. A. C. L. R. R. Co.* 356 (358).

While *L. & N.* concurred in import rates on burlap, there was no agreed divisions via its line. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (547).

That divisions of through rate must be made with one and sometimes two additional lines justifies higher rates from Alton than East St. Louis to Henderson and Owensboro, Ky. *Alton Board of Trade v. C. & A. R. R. Co.*, 589 (592).

Line performing terminal service entitled to greater division than line relieved of such service. *Waverly Oil Works v. P. R. R. Co.* 621 (631).

Lines from New Orleans to St. Louis shrink their divisions for benefit of lines west of New Orleans. *Molasses Rates from Mobile*, 666 (671).

**DOUBLE-DECK CARS.**

Manufacturers and dealers frequently ship automobiles in carloads by double-decking the cars, but it was testified that it is not feasible for the carriers to do this, or to make use of the space above one or more automobiles in a single car. *Keats Auto Co. v. O-W. R. R. & N. Co.* 412 (413).

**DOUBLE-SACKING.**

Arrangement made for double-sacking and storing of export rice at port. *Port Arthur Rice Milling Co. v. T. & F. S. Ry. Co.* 697 (700).

**DUTY OF CARRIER.**

Reconsignment is a service which the carrier may, under the act, be properly expected to furnish. *Becker v. P. M. R. R. Co.* 645 (655).

**DRAYAGE.**

Absorption of, for handling coffee from shipside to cars. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (486).

Drayage service performed by company that has no equipment, but engages another transfer company to do the work paying the full allowance received by the railway. *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (642).

**DRAYAGE—Continued.**

Drayage charges not found to have been result of carriers' negligence in routing. *Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co.* 703 (705).

**ELEVATION. See also COMMERCIAL ELEVATION; TRANSIT PRIVILEGE.**

Refusal to allow one-fourth of one cent for the elevation and transfer of barley converted into malt, while paying this allowance for the elevation and transfer of barley and other grain which has been clipped, cleaned, blown, or mixed, does not result in unjust discrimination. *Milwaukee Maltsters' Traffic Asso. v. G. T. W. Ry. Co.* 489.

It will be observed that in order to constitute "elevation" the grain must be loaded out of the elevator as well as unloaded into it. *Id.* 489 (493).

**ELEVATORS.**

Discriminatory practice of leasing elevators at unduly low rental or operating same through subsidiary corporations, discontinued. *Omaha Grain Exchange v. A. T. & S. F. Ry. Co.* 664.

**EMBARGOES.**

In times of car shortage the D. & R. G. and C. & S., in order that their supply of cars may not be depleted by diversions, forbid the loading of their cars to points on the Santa Fe lines. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (504).

**EMPTYES.**

Equipment returned empty. *Arizona Corporation Commission v. A. T. & S. F. Ry. Co.* 428 (431); *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (539); *Chicago Switching Charges*, 677 (679).

Tank cars used for fuel oil must be returned empty from destinations. *Fairmont Creamery Co. v. A. T. & S. F. Ry. Co.* 661 (662); *Marshall Oil Co. v. C. G. W. R. R. Co.* 707 (708).

**EQUALIZING RATES.**

Difference in ocean rates between north Atlantic and Gulf ports equalized in total through rates from foreign port to St. Louis. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (544).

**EQUIPMENT.**

Increase in size of. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (536).

Equipment for through shipments originating on K. C. & M. Ry. Co. is furnished by the Frisco. *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (643).

**ERROR.**

Qualifying phrase in tariff inadvertently omitted. Corrected, making advance, justified when circumstances explained. *Gotttron Bros. Co. v. G. & W. R. R. Co.* 38 (46).

Different address on package than on bill of lading prepared by shipper. *American Agricultural Chemical Co. v. B. & A. R. R. Co.* 398 (400).

Factor of combination through rate alleged to have been published through error, and attempt made to increase such factor. *Omaha-Oklahoma Fresh-Meat Rates*, 454 (455).

This claim of mistake in the publication of rates which remain in effect for as long a period as two years is not persuasive. Commission will regard rate as one voluntarily and knowingly made. They should be discovered and eliminated within a reasonable time. *Wausau Advancement Asso. v. C. & N. W. Ry.* 459 (460).

**ERROR—Continued.**

Whether joint rates on cypress and yellow-pine lumber was included in tariff through error is of little moment. Question is whether the proposed elimination of joint rates is proper. *Lumber Rates Texas etc., to Oklahoma and Missouri*, 471 (476).

Due to error carrier failed to reduce rates on coconuts in straight or in mixed carloads with bananas. *Bryant Co. v. Ft. W. & D. C. Ry. Co.* 594 (597).

**ESTIMATED WEIGHTS.**

Charges on potatoes should have been assessed on actual weight instead of per crate basis. *Crutchfield, Woolfolk & Clore v. F. R. C. Ry. Co.* 274 (276).

An estimated weight should bear some close relation to the actual weight. Where the estimate is about one-third more than the actual weight, it is manifest that there is something radically wrong with the estimated weight. *Id.* 274 (278).

Blackstrap molasses per gallon 11.7 pounds. *Molasses Rates from Mobile*, 686.

An empty beer barrel is estimated to weigh 100 pounds. *Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co.* 688 (692).

**ESTOPPEL.**

Carriers must be regarded as estopped from advancing Duluth rate. *Transcontinental Rates from Group F*, 1 (6).

Shipper declaring false value to secure reduced rate is estopped, in case of loss or damage, from denying correctness of value given. *In re Express Rates*, 132 (138).

**EVIDENCE. See also CUMULATIVE EVIDENCE.**

Exhibit was introduced containing cumulative financial, operating, and traffic data for roads which are not parties to this case and do not participate in the movement involved. The bearing of these data upon the present controversy is not apparent. *Lumber Rates from Texas etc., to Oklahoma and Missouri*, 471 (475).

General statement that cost of conducting terminals has increased and more revenue is needed. This kind of testimony furnishes no justification. It is susceptible of exact proof. *Detroit Switching Charges*, 494 (497).

**EXCURSION FARES.**

Movement of passengers in guaranteed numbers upon special trains are excursions to which carriers may give, but to which Commission has no power to compel them to give, a different fare per passenger from reasonable fare charged for transportation of single passengers upon regular trains. *Carnegie Board of Trade v. P. Co.* 122 (128).

Fares for ordinary movement of passengers are not properly to be compared with fares provided for these excursion parties in view of the substantially different conditions attached. *Id.* 122 (129).

**EXEMPLARY DAMAGES.**

Not within province of this Commission to grant. *Eichenberg v. S. P. Co.* 584 (588).

**EXPEDITED SERVICE.**

Necessity for perishable freight. *R. R. Com'rs. of Fla. v. S. Exp. Co.* 684 (687).

**EXPENSES.**

Under percentage contracts, expenses can be made to increase faster than revenue whenever contracting parties so desire. In re *Express Rates*, 132 (150).

**EXPLOSIVES.**

The rules governing storage charges on explosives and other dangerous articles embrace most of the features of the code adopted and recommended by the American Railway Association for general use. *Storage Charges in C. F. A. Territory*, 372 (373).

**EXPORT RATES.**

Rate on hardwood lumber from Arkansas to New Orleans, when for export, not found unreasonable. *National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co.* 215.

Higher domestic rate properly assessed where no notation made on bill of lading, even though intention of complainant to forward shipments to foreign country. *Port Arthur Rice Milling Co. v. T. F. & S. Ry. Co.* 697 (699).

**EXPOSITIONS.**

Returning free of charge property exhibited at. *Dairymen's Supply Co. v. P. R. R. Co.* 406.

**EXPRESS COMPANIES.**

Are also investment companies, bankers, carriers on the high seas and in foreign lands, and agents, performing for pay a wide variety of services other than transportation both at home and abroad. In re *Express Rates*, 132 (149).

Directory of Express Stations fixing location of each such station by block number and sub-block letter should be published;

Pick-up and delivery limits should be specifically defined;

Block system of stating rates should be adopted;

A new and uniform classification should be adopted;

Rules and regulations proposed in former report should be adopted;

Express receipt herein prescribed should be adopted;

Joint Rates proposed in former report should be published;

Joint tariff as proposed in former report conforming to those contained herein should be published;

Order of June 8, 1912, amended so as to require the attachment of the waybill and label therein prescribed to only one package in a shipment of two or more packages of perishable property. *Id.* 132.

**EXPRESS RATES.**

Statistics criticized that were introduced to show that present express rates on perishable freight has been to largely curtail the movement by express. *R. R. Com'rs. of Fla. v. S. Exp. Co.* 634 (638).

Express rates kept high enough to prevent the movement of so large a volume of tonnage as would impair the efficiency of passenger service. *Id.* 634 (636).

**EXPRESS SERVICE.**

Express service desired because shipments to smaller communities are not of sufficient size to warrant movement in carload quantities and the less-than-carload service by freight is too slow except where package cars are run. *R. R. Com'rs. of Fla. v. S. Exp. Co.* 634 (635).

**EXTRA SERVICE.**

Compensation should be made when reconsignment involves extra service. *Becker v. P. M. R. R. Co.* 645 (656).

**FACILITIES.**

Damages awarded on basis of stipulated facts as to benefits accruing to complainant's competitor under preferential contract for wharfage facilities. *Eichenberg v. S. P. Co.* 584 (588).

**FACTOR.**

Proportional rate as factor in through charges, found unreasonable. *Interior Iowa Cities Case*, 64 (74).

Carrier not justified in increasing factor where through rate exceeds sum of the intermediate rates. *California-Nevada Lumber Rates*, 313 (315).

Advance in factor of combination through rate not justified. *Omaha-Oklahoma Fresh-Meat Rates*, 454 (458).

Factor of combination through rate from Memphis to Little Rock not found unduly prejudicial as compared with proportional rate on through shipments between same points on traffic originating in different localities. *Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co.* 529 (532).

Factor of intermediate rates, not on file with Commission, and used in absence of through rate found unreasonable. *Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co.* 701 (702).

**FALSE BILLING.**

Shipper declaring false value to secure reduced rate is estopped, in case of loss or damage, from denying correctness of value given. *In re Express Rates*, 132 (138).

**FAMILY LINES.**

That Pennsylvania declines to open its terminals to other systems entering Pittsburgh while arrangement with its own family lines is made, not found to constitute undue discrimination. *Waverly Oil Works v. P. R. R. Co.* 621 (624, 625).

**FARES ON TRAIN.**

If cash tendered on trains, penalty in addition to the single-ticket rate. *In re Mileage Books*, 318 (325).

**FARMING OUT.**

As applied to railroad and express companies. *In re Express Rates*, 132 (150).

**FERRIES.**

Cost of operation mentioned. Rates on Coal to Milwaukee and other Wisconsin points, 527 (528).

C. & O. rails only reach South Portsmouth, Ky., and traffic for Portsmouth ferries across the river. *Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co.* 703 (704).

**FLAT DIFFERENTIAL.**

Requested on grain from Omaha over Kansas City to Oklahoma. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (681).

**FOREIGN COMMERCE. See also CANADA.**

Mere intention on the part of a shipper to export his traffic, unaccompanied by any circumstance or outward indication that the traffic is in fact for export, is not sufficient to stamp it as foreign commerce. *Port Arthur Rice Milling Co. v. T. & F. S. Ry. Co.* 697 (700).

**FRANKS.**

Expense of this portion of express business is not legitimately to be charged to paying patrons. *In re Express Rates*, 132 (150).

**FREE COAL.**

Sold during transit. *Becker v. P. M. R. R. Co.* 645 (646).

**FREE DRAYAGE.**

Free drayage service necessitated by comparative disadvantage of location of station with competitor to the industrial section of city. *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (642).

**FREE RECONSIGNMENT.**

Contention that complainants were entitled to free reconsignment under tariff in effect not sustained. *Becker v. P. M. R. R. Co.* 645 (650).

**FREE SERVICE.**

Contention that no charge should be made where cars are switched to private scales for weighing not sustained. *American Brake Shoe & Foundry Co. v. B. Ry. of C.* 350 (351).

**FREE STORAGE.** *See STORAGE.***FREE TIME.** *See also DEMURRAGE.*

In computing free time Sundays and legal holidays should be excluded, but after expiration of free time Sundays and legal holidays may be properly included. *New Orleans Storage Rules and Regulations*, 605 (607).

**FREE TRANSPORTATION.**

Refusal to return free of charge property exhibited at National Dairy Show Association in Chicago while returning free of charge property exhibited at State fairs and expositions at Syracuse, N. Y. and Trenton, N. J. not in violation of section 8. *Dairymen's Supply Co. v. P. R. R. Co.* 406.

While the act authorizes the free transportation of property for the purposes named, it does not require the carriers to grant such transportation. *Id.* 406 (408).

In so far as the laws administered by this Commission are concerned, the right of carriers to transport government property free or at reduced rates is elective and not mandatory. *U. S. v. U. P. R. R. Co.* 518 (524).

**GEOGRAPHICAL RELATION.** *See also ADVANTAGES; COMMERCIAL AND ECONOMIC CONDITIONS; LOCATION.*

As justification for undue preference. *Mississippi River Case*, 47 (55).

**GOVERNMENT.**

Should be given authority over track scales. *In re Weighing of Freight by Carriers*, 7 (33).

Not entitled to special consideration in the administration of section 15 as to through routes. *U. S. v. U. P. R. R. Co.* 518 (523).

In so far as the laws administered by this Commission are concerned, the right of carriers to transport property free or at reduced rates is elective and not mandatory. *Id.* 518 (524).

**GRADED RATES.**

Proportional class rates should be graded back across the State on basis of proportional scale of 55 cents between the rivers. *Interior Iowa Cities Case*, 64 (75).

Rates from Chicago to Missouri River made on an 80 per cent scale should be graded back across the state down to the 37½ to 41.7 cent rates at the Mississippi River. *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 76 (80).

**GRADES.**

General grade on Santa Fe from Gallup to Arizona points is downward, Gallup being 6,498 feet above sea level, and Phoenix, the southern terminus of the Prescott & Phoenix branch 1,200 above sea level. *Arizona Corporation Commission v. A. T. & S. F. Ry. Co.* 428 (430).

**GRADES—Continued.**

Defendants allege that direct line should not be used in figuring comparative mileages because trains must be operated over heavy grades. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (572).

**GRAIN.**

Slight differences in the rate are not felt by the producer of grain to the same extent that they are by many other industries. *Grain Rates in C. F. A. Territory*, 549 (559).

**GROUP RATES. See also BLANKET RATES; PERCENTAGE RATES; ZONE RATES.**

Proposal to modify the F group by distributing parts of it among groups D and E, thereby advancing rates, justified. *Transcontinental Rates from Group F*, 1 (3).

Rates to point upon edge of territorial group not fairly comparable with other rates. *Iowa State Board of R. R. Com'rs v. A. E. R. R. Co.* 193 (195).

In stating rates between remote sections, territorial groups of considerable extent must be employed. *Id.* 193 (198).

Groups designated for Colorado common points should be used as to Utah common points. *Id.* 193 (199).

Mentioned. *National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co.* 215 (217).

Augusta is in the southeastern territory whereas Columbia is in the Carolina territory. To afford Columbia same rates as Augusta would be to take Columbia out of its own natural group. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (343, 346).

Establishment of rates on mileage basis instead of group adjustment not warranted by commercial conditions. *Arizona Corporation Commission v. A. T. & S. F. Ry. Co.* 428 (430).

Douglas, which has a location similar to that of Fitzgerald, should not be excluded from the Fitzgerald group. *Mayor and Council of Douglas v. A. B. & A. R. R. Co.* 445 (452, 453).

To change the relation of Springfield will probably require a change as to several other localities and a general recasting of these groups in southwestern Illinois. But we are unable to resist the conviction that the disparity is too wide between Peoria and Springfield. *Springfield Commercial Asso. v. P. R. R. Co.* 511 (514).

Although Illinois is divided into territorial groups, to which percentage rates are applied in case of most commodities, grain rates have not for some time been and are not to-day so stated. *Grain Rates in C. F. A. Territory*, 549 (555).

That the grouping of Dallas with Texas points which are farther distant from St. Louis may work to its detriment is no argument against equitable adjustment of rates to Texarkana. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (576).

Alton requests that it be considered a part of the St. Louis manufacturing district. *Alton Board of Trade v. C. & A. R. R. Co.* 589 (591).

**HAMPERS.**

Tariff providing for rates on potatoes in barrels not found applicable to shipments in hampers. *Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.* 274 (276).

**HEARING. See also ISSUE.**

Commission can not prescribe rate without investigation and a hearing. *In re Express Rates*, 182 (138).

**HIGH-GRADE ARTICLES. *See also* LOW RATES.**

Freight rate is not so significant as with coarser commodities. *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (233).

**HOCKING GROUP.**

Described. Brick Rates from Ohio Points to Huntington, W. Va. 292.

**IDLE-HOUR SYSTEM.**

Car distribution described. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (503).

**IMPORTS.**

Burlaps from Calcutta, India. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543.

Blackstrap molasses from Cuba. Molasses Rates from Mobile, 666 (668).

Tariff should be revised so that reduced rate will include other foreign countries. Id. 666 (672).

**IN AND OUT RATES.**

The inbound rates to Shreveport and Texarkana should be adjusted independent of the outbound rates, and in such manner as to avoid unjust discrimination. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (576).

**IN ANY RESPECT WHATSOEVER.**

Considered in connection with section 8. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (168).

**IN BULK.**

Salt shipped without containers. *Gotttron Bros. Co. v. G. & W. R. R. Co.* 83 (46).

**INDUSTRIAL LINES.**

Commission can not compel trunk line to make allowances to industry under section 15 for services rendered by industrial line. *Mrf. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (101).

Common carrier, formerly considered an industrial line, should collect its charges from former owning industry the same as it does from other shippers. Id. 93 (102).

**INDUSTRIAL RATES.**

Business built up on through rates. Claim that it will be impossible to continue should combination rates be permitted. *Oklahoma Grain Rates*, 462 (465).

A carrier should not be permitted to retain to itself the lumber market at points on its line for the benefit of producing points on its line, to the exclusion of producing points on other lines. *Lumber Rates Texas etc., to Oklahoma and Missouri*, 471 (474).

Rates from the east to Springfield are approximately 6 per cent higher than to Peoria. It was testified under these circumstances industries have been unable to locate at Springfield. Such a disadvantage in transportation charges must certainly be a serious handicap to any locality. *Springfield Commercial Asso. v. P. R. R. Co.* 511 (514).

**INFORMAL COMPLAINT.**

Running of statute not barred by presentation of informal complaint, where complainant failed to present formal complaint until five years later. *Dillon Coal & Transfer Co. v. O. S. L. R. R. Co.* 91.

**INFORMATION.**

Allegation that negotiations between shipper and carrier were conducted in such manner as to give improper advantage to shipper through advance information as to reduced rates to be published, not sustained. *Molasses Rates from Mobile*, 666 (669).



**INSPECTION.**

Daily inspection of scales by person in charge should be supplemented by an expert inspection at regular intervals. In re Weighing of Freight by Carriers, 7 (12).

En route shipment was inspected, and as a result changes were made in the description of the articles. United Refrigerator & Ice Machine Co. v. C. & N. W. Ry. Co. 439.

Hay by licensed inspector. New Orleans Storage Rules and Regulations, 605 (606).

Privilege of inspection previous to reconsigning coal not provided for in tariffs. It would seem to be an incident of the reconsigning service when it involves holding of cars. Becker v. P. M. R. R. Co. 645 (653).

**INSPECTION BUREAU.**

Private scales used by carriers tested under direction of Southern Weighing and Inspection Bureau. American Brake Shoe & Foundry Co. v. B. Ry. Co. of C. 350 (351).

**INSURANCE.**

Storage charges not based upon value of service plus cost of insurance.

Storage Charges in C. F. A. Territory, 372 (374).

**INTENTION.**

Higher domestic rate properly assessed where no notation made on bill of lading, even though intention of complainant to forward shipments to foreign country. Port Arthur Rice Milling Co. v. T. & F. S. Ry. Co. 697 (699).

**INTERCHANGE OF TRAFFIC.**

Joint rates of Frisco to K. C. & M. stations may be higher than to Rogers, its point of interchange. Through routes and joint rates should be continued to local points on a reasonable basis above rate to Rogers. Kansas City & M. Ry. Co. Rate Cancellations, 640 (644).

Number of cars interchanged on through billing. Id. 640 (643).

Act so amended that it is for the Commission to say whether as a matter of fact discrimination exists where carrier refuses to open its terminals under a contract for the interchange of freight. Waverly Oil Works v. P. R. R. Co. 621 (625).

**INTERCHANGE SWITCHING.**

Practice of found to be discriminatory under section 3. Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (540).

**INTERCHANGE TRACKS.**

Defendant's contention that to permit reconsignment at Milwaukee would cause congestion on the interchange tracks without foundation in the record. Becker v. P. M. R. R. Co. 645 (653).

**INTERCHANGEABLE MILEAGE BOOKS.**

Regulation requiring exchange of coupons from interchangeable mileage book for mileage-exchange tickets before commencing journey not found discriminatory or otherwise in violation of act. In re Mileage Books, 318.

**INTERLINE SETTLEMENTS.**

Joint rates canceled because of irregular practices in interline settlements. Kansas City & M. Ry. Co. Rate Cancellation, 640 (642).

**INTERMEDIATE LINE.**

Responsibility of for failure to forward via cheapest available route in absence of routing instructions. Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co., 708 (705).

**INTERMEDIATE RATES.** *See also* LONG AND SHORT HAUL.

Provision in tariff that upon request no higher rates would be established on short notice from any intermediate point, under authority of Rule 77, Tariff Circular 18-A. Sandstone, Minn.—Missouri River Building Stone Rates, 269.

Knoxville is directly intermediate to Cincinnati-Louisville and Columbia-Augusta on at least one of the routes, and rates from Knoxville to Columbia should not exceed those contemporaneously maintained to Augusta. Columbia Chamber of Commerce v. S. Ry. Co. 339 (349).

In complying with order carrier did not adjust the intermediate rates on the basis of the rate prescribed, but merely applied that rate to all intermediate points where it would result in a reduction of the former rate. Arizona Corporation Commission v. A. T. & S. F. Ry. Co. 428 (429).

No matter how traffic is routed from St. Louis and defined territory it must pay a higher rate to stations intermediate to Shreveport than to Shreveport. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569 (577).

Texarkana rates should be regarded as maximum rates to all points intermediate via the direct lines from St. Louis, Kansas City, and Memphis. Id. 569 (580).

While carriers may properly meet water competition, the maintenance of a lower rate to one point than to other points which are intermediate can not be justified on the ground that it is necessary to suppress water competition. Id. 569 (583).

Rates via circuitous routes made to meet short-line road to long-distance point do not bear a reasonable relationship to intermediate points. Alton Board of Trade v. C. & A. R. R. Co. 589 (593).

**INTERMEDIATE SWITCHING.**

Described. Detroit Switching Charges, 494.

**INTERSTATE ROUTE.**

Petition to establish between two points in same State a through route and joint rate via a circuitous interstate route dismissed. Haverhill Box Board Co. v. B. & A. R. R. Co. 336.

**INTERURBAN ROADS.**

Connect Elgin and Aurora and bring the retailers in close competition in the rural districts and intermediate towns. Elgin Commercial Club v. B. & M. R. R. 380 (381).

**INTERVENERS.**

Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569 (571); Waverly Oil Works v. P. R. R. Co. 621 (622); Omaha Grain Exchange v. C. R. I. & P. Ry. Co. 680 (682).

**INVESTMENT.**

Considered. Detroit Switching Charges, 494 (497).

Road not built as an outlet for any appreciable volume of heavy tonnage in sight, but merely as such an investment and upon such promise as a sparsely settled locality might hold out. Kansas City & M. Ry. Co. Rate Cancellation, 640 (643).

**IOWA DISTANCE TARIFF.**

Application of interstate distance tariff on grain instead of Iowa distance tariff not justified. Iowa Grain Rates, 354.

**ISSUE.**

Reasonableness of rate in former opinion passed upon petition for rehearing denied. Taylor Dry Goods Co. v. M. P. Ry. Co. 308.

## ISSUE—Continued.

This Commission never looks to the niceties of pleading. The mere fact that the word "overcharge" is used instead of "unreasonable exaction" ought not to be permitted to interfere with a trial of the substantial issue presented. *Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.* 364 (367).

Claim that wool rates in different parts of New England are not properly adjusted not considered. Should be called to the attention of the Commission by proper complaint. *Massachusetts-Maine Wool Rates*, 396 (397).

The rate attacked is not the rate applicable to the service performed, but is simply a factor that arbitrarily enters into the price of the commodity when consumed at destination. *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (674).

While stations named in complaint may furnish a guide to the proper adjustment of the remaining stations, we must necessarily confine ourselves to the pleadings and make no finding concerning rates to such remaining stations. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (681).

## JOBGING CENTERS.

*Texarkana, Ark.-Tex., and Shreveport, La. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (571).

## JOBGING HOUSES.

By direct shipments by express to small southern points, produce would not have to go through jobbing houses in cities. *R. R. Com'rs. of Fla. v. S. Exp. Co.* 634 (637).

## JOINT AGENCY.

*P. M. and St. Paul roads at Milwaukee, Wis. Becker v. P. M. R. R. Co.* 645 (647).

## JOINT RATES.

Should be established between trunk lines and Manufacturers Railway, under which trunk lines retain their full rate to St. Louis, the division of the joint rate accruing to Manufacturers Railway to be paid to it by its shippers. *Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 98 (106).

Respondents shall cease and desist from charging rates in excess of the joint rates proposed in former report. In re *Express Rates*, 132.

In making joint through rates on long-distance traffic to local or noncompetitive points, differentials above rates to basing points bear some reasonable relation to total distances involved. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (165).

Reduction of inter-river rate should carry with it a corresponding reduction of joint rate, as that is made up of rate to Mississippi River, plus rate between that and the Missouri. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (213).

Should be established from Kirby to destinations on the C. & N. W. and P., R. C. & N. W., herein involved no higher than \$1 above the rates prescribed from Sheridan. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (260).

For distances within 500 miles of point of origin joint rates should be established from Sheridan to points on the N. P. east of Billings not more than 40 cents over those prevailing from Red Lodge, and to points west of Billings 55 cents over Red Lodge, and from Kirby to points on the N. P. east and west of Billings not more than 65 cents over prevailing rates from Red Lodge. *Id.* 250 (264).

Generally true that a carrier may reasonably accept less than its local rate as its division of a joint rate. *Sandstone Minn.-Missouri River Building Stone Rates*, 269 (273).

## JOINT RATES—Continued.

Joint rates prescribed on citrus fruits from landings on upper Caloosahatchee River in Florida to Jacksonville, Fla., when for beyond. *R. R. Com'rs of Florida v. A. C. L. R. R. Co.* 356 (359).

On shipment of grapes from Lodi, Cal., to New York and reconsigned at Minneapolis, Minn., joint rate should have been assessed instead of combination. *Mason Bros. v. S. P. Co.* 402.

Available and feasible routes are already open via which joint rates are in effect substantially on the basis here claimed. No good reason why a joint rate should be established over still another route. *Birge-Forbes Co. v. M. K. & T. Ry. Co.* 409 (411).

Through rates from the Ohio River crossings to Pelham, Camilla, and Sylvester, Ga., are constructed by the addition of prescribed arbitraries to the rates to certain of the basing points. They are published in a joint agents' tariff and are thus joint through rates. *Town of Pelham v. A. C. L. R. R. Co.* 433 (434).

Advance in factor of combination through rate not justified. *Omaha-Oklahoma Fresh-Meat Rates*, 454 (458).

The theory upon which these lumber rates are constructed is that the lowest sum of the local rates by any open gateway shall be taken as the joint through rate. *Wausau Advancement Asso. v. C. & N. W. Ry. Co.* 459 (460).

Cancellation of to depressed area not found to have been justified. *Lumber Rates Texas etc., to Oklahoma and Missouri*, 471.

Joint rate and through route denied because carrier would have to participate in traffic embracing substantially less than the entire length of its line. *U. S. v. U. P. R. R. Co.* 518 (523).

Canceled thereby closing routes. Rates on Coal to Milwaukee and other Wisconsin Points, 527 (528).

Joint through rate on malt from Minneapolis to Pittsburgh higher than combination made up of rate to Chicago and reshipping rate to Pittsburgh. *Grain Rates in C. F. A. Territory*, 549 (550).

The short line with two or more line hauls may meet the rate by the long line and decline to establish a joint through rate by the short line, unless the line is so circuitous as to be unreasonably long within the definition of section 15. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 563 (567).

The authority of the Commission to fix a joint rate must be as broad as the service. It must be from the point where the traffic is received to the point where it is delivered by the railroad. *Waverly Oil Works v. P. R. R. Co.* 621 (629).

History of legislative enactments. *Id.* 621 (630).

Complaint asks for mutual switching arrangements among the connecting lines at Pittsburgh. System of joint rates suggested, but no order entered. If carriers do not comply with suggestions, complaint may be amended. *Id.* 621 (632).

Joint rates canceled because connecting line provided for free store door delivery. *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (642).

We do not think that the Frisco should be required to participate in joint rates to its own stations. *Id.* 640 (644).

On coal intended for shipment beyond; advance permitted in. Rates on Coal to Milwaukee, Wis., and other Points, 527.

**JUNCTION POINT.**

Joint rates of Frisco to K. C. & M. stations may be higher than to Rogers, its point of interchange. Through routes and joint rates should be continued to local points on a reasonable basis above rate to Rogers. *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (644).

**JURISDICTION.**

Some Federal tribunal, perhaps this Commission, should be given authority over track scales. *In re Weighing of Freight by Carriers*, 7 (33).

We are not deprived of jurisdiction to consider the merits of the controversy merely because delegation to the officers presenting the complaint of the right to do so in the name of the United States is not affirmatively shown. *U. S. v. U. P. R. R. Co.* 518 (520).

We are given jurisdiction over traffic from a point in the United States to a point in Canada, and we may undoubtedly act upon the American lines over which we have jurisdiction. Rates on Soda Ash and Other Commodities, 613 (614).

In our opinion public may require Pennsylvania to handle cars to and from industries upon its terminal tracks in the city of Pittsburgh, and we are further of the opinion that the present power of the Commission is adequate to that end. *Waverly Oil Works v. P. R. R. Co.* 621 (628).

The authority of the Commission to fix a joint rate must be as broad as the service. It must be from the point where the traffic is received to the point where it is delivered by the railroad. *Id.* 621 (629).

No control over contract between coal producer and his purchaser. *In re Weighing of Freight by Carriers*, 7 (25).

Commission can not compel trunk line to absorb charge of connecting terminal line for gathering freight originating on latter to rails of trunk line. *Mfrrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (101).

Commission can not compel trunk line to make allowances to industry under section 15 for services rendered by industrial line. *Id.* 93 (101).

Commission no power to compel carriers to make excursion rates. *Carnegie Board of Trade v. P. Co.* 122 (128).

The Commission has no power to require carriers to receive interchangeable mileage coupons upon trains wholly within a State, nor that mileage sold, by its terms good only for transportation wholly within a State, shall be receivable for interstate journeys. *In re Mileage Books*, 318 (321).

No duties are delegated to us under, and we can not assume to interpret or determine the purpose or scope of, the so-called public highways act or of statutes under which rights and privileges may be reserved to the United States in return for subsidies in lands or bonds or loan of credit. *U. S. v. U. P. R. R. Co.* 518 (524).

The Commission is not authorized to fix a minimum rate. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (547).

The Commission is not authorized to treat carriers collectively as a single unit or system. *Id.* 543 (547).

Market quotations offered to show advantage enjoyed by Omaha over Kansas City. There is no difference in the intrinsic value of like grain in the two markets and it is not within our province to adjust rates merely to equalize market conditions. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (686).

**KNOCKED DOWN.**

We do not conceive that the term knocked down in pieces, means that a machine must be severed into all its component parts and these parts shipped as separate pieces. *United Refrigerator & Ice Machine Co. v. C. & N. W. Ry. Co.* 439 (441).

Incubators and brooders knocked down flat. *Lee Co. v. I. C. R. R. Co.* 515 (516).

**LABELS.**

Previous order changed so that hereafter a label need be attached to only one package in each shipment of perishable property, such label to indicate the number of packages in the shipment. *In re Express Rates*, 132 (136).

Different colors for explosives and other dangerous articles. *Storage Charges in C. F. A. Territory*, 372 (373).

**LAND-GRANT DEDUCTIONS.**

In many cases the land-grant deductions result in lower net charges on traffic routed via the N. P. and A. T. & S. F. at the present rates than the joint rates paid by other shippers on traffic via the U. P. through routes. *U. S. v. U. P. R. R. Co.* 518 (521).

If the denial of the through routes and joint rates here sought tends to deprive the Government of the full benefit of land-grant deductions reserved to it by statute, remedy must be sought at other hands than ours. *Id.* 518 (524).

**LAND-GRANT ROADS.**

Net rates of, equalized by carriers between same points. *U. S. v. U. P. R. R. Co.* 518 (520).

The N. P. R. R. Co. and A. T. & S. F. Ry. Co. *Id.* 518 (521).

**LATERAL BRANCH LINES.**

A lateral branch line of railroad is entitled to a switch connection without regard to its status as a plant facility or common carrier. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (505).

**LEASE.**

In times of car shortage it is the duty of each carrier to distribute its entire equipment to its shippers before disposing of same by sale, lease, or otherwise. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (506).

Terminal company to railroads. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (540).

Discriminatory practice of leasing elevators at unduly low rental or operating same through subsidiary corporations discontinued. *Omaha Grain Exchange v. A. T. & S. F. Ry. Co.* 664.

Land for purpose of building tank leased by railroad at rental said to be equal to 6 per cent of the value of land so leased. *Molasses Rates from Mobile*, 666 (668).

**LEGAL HOLIDAYS.**

In computing free time Sundays and legal holidays should be excluded, but after expiration of free time Sundays and legal holidays may be properly included. *New Orleans Storage Rules and Regulations*, 605 (607).

**LEGAL RATES.**

Tariff providing for rates on potatoes in barrels not found applicable to shipments in hampers. *Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.* 274 (276).

**LEGAL RATES—Continued.**

Factor of intermediate rates, not on file with Commission, and used in absence of through rate found unreasonable. *Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co.* 701 (702).

**LESS-THAN-CARLOAD RATES. See also ANY-QUANTITY and CARLOAD AND LESS-THAN-CARLOAD.**

Rating on sulphate ought not to exceed fourth class. *German Kali Works, Inc., v. A. T. & S. F. Ry. Co.* 223 (228).

Less-than-carload rates on automobiles from New York and Syracuse, N. Y., to Portland, Oreg., not found unreasonable. *Keats Auto Co. v. O.-W. R. R. & N. Co.* 412.

Are applicable to a different class of traffic from that embraced in carload and peddler-car shipments. Rates on Packing-House Products, 599 (600).

Express rates, it is averred, should bear some relation to freight rates between same points. *R. R. Com'rs. of Fla. v. S. Exp. Co.* 634 (638).

**LIGHTERAGE.**

The handling of freight by car float and by lighter differs materially. *Chicago Lighterage Charges*, 390 (394).

**LIKE KINDS OF TRAFFIC.**

Sugar and coffee are not like kinds of traffic within the meaning of section 2. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (487).

**LIMITATION OF ACTION.**

Complainant who was advised by Commission that his claim presented informally would be considered on formal docket, took no further action for five years when he filed his complaint. Held, barred under section 16. *Dillon Coal & Transfer Co. v. O. S. L. R. R. Co.* 91.

The filing of each claim is, in essence, an independent proceeding on the part of that complainant, and the statute of limitations must run from the date of the filing in each individual case. In re *Advances on Live-stock*, 332 (335).

**LIMITED LIABILITY.**

Of carrier shall be limited to maximum of \$50 on each shipment weighing less than 100 pounds, and to maximum of 50 cents per pound on shipments weighing more than 100 pounds, unless greater value declared at time of shipment. In re *Express Rates*, 132 (137).

**LINE HAULS. See also Two-LINE HAULS.**

As justification for lower rates. *Mississippi River Case*, 47 (56).

No fixed rule of transportation requiring higher rate for two-line than for one-line haul of same distance. *Id.* 47 (59).

Carrier permitted to discontinue through route voluntarily maintained for four years which embraced substantially less than the entire length of its railroad. Rates on Cottonseed and its Products, 219 (221).

Rates prescribed by Commission for two-line hauls requested for three and four line hauls. *Arizona Corporation Commission v. A. T. & S. F. Ry. Co.* 428 (432).

Carrier enjoying, absorbs switching charges. *Detroit Switching Charges*, 494.

Reduction of absorption of switching charges by line-haul carriers, not justified. *Chicago Switching Charges*, 677 (679).

Through route denied because carrier would have to participate in traffic embracing substantially less than the entire length of its line. *U. S. v. U. P. R. R. Co.* 518 (523); *Waverly Oil Works v. P. R. R. Co.* 621 (630).

## LINE HAULS—Continued.

Rate from New York to Memphis not found unreasonable or unduly prejudicial as compared with rate from New York to St. Louis where carriers having direct one-line haul to St. Louis do not serve Memphis and where carriers serving Memphis reach St. Louis only by two or three line hauls. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (547).

Short distance haul over two or more lines meeting rates by one line by longer route. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 563 (567).

Traffic from Alton, Ill., to Henderson and Owensboro, Ky., requires a haul over three and sometimes four lines, while traffic from East St. Louis requires a two-line haul. *Alton Board of Trade v. C. & A. R. R. Co.* 589 (592).

## LOADING.

Salt loads heavy, and entitled to low rates. *Gottron Bros. Co. v. G. & W. R. R. Co.* 38 (43).

Culverts are loaded both in box and flat cars, depending on the sizes and amount to be loaded. *Klauer Mfg. Co. v. A. T. & S. F. Ry. Co.* 508 (509). Generally agreed that nesting of culverts was frequently injurious and that nested culverts of the larger sizes are much more difficult to handle than the individual culverts, loading and unloading being done by hand. *Id.* 508 (509).

That shipper presented cotton in such form that carload lading could be doubled and cost of transportation correspondingly diminished, does not as a matter of right, entitle him to a better rate. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (208).

## LOCAL POINTS.

Joint rates of Frisco to K. C. & M. stations may be higher than to Rogers, its point of interchange. Through routes and joint rates should be continued to local points on a reasonable basis above rate to Rogers. *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (644).

## LOCAL RATES.

Disregarded except as their sum is used to measure through charge, and proportional rate on through traffic from river crossings to interior point is higher than local rate between same points. *Interior Iowa Cities Case*, 64 (69).

Proportional rate that exceeds local rate between same points not unlawful in and of itself. *Id.* 64 (73).

Carrier may accept less for through service than reasonable local rate. *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (234).

Generally true that a carrier may reasonably accept less than its local rate as its division of a joint rate. *Sandstone, Minn.—Missouri River Building Stone Rates*, 269 (273).

Established voluntarily can fairly be taken as measure of what carriers consider reasonable. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (252).

We have said that a proportional rate applying on through traffic might well be less than the corresponding local rate, but we have not said that such proportional rate must be, or in every case should be, less. *Boney & Harper Milling Co. v. A. C. L. R. R. Co.* 333 (338).

Assuming the local rates of Frisco to Rogers to be reasonable, we can not compel that carrier on through traffic to shrink those rates in absorption of the local rates of the K. C. & M. beyond that point. *Kansas City & M. Rate Cancellation*, 640 (643).



**LOCALITIES.** *See* page 757.

**LOCATION.** *See also* ADVANTAGES, COMMERCIAL AND ECONOMIC CONDITIONS.

Points in question, by reason of their location, naturally belong in the groups to which they are assigned in proposed tariffs. Transcontinental Rates from Group F, 1 (4).

Commission recognizes right of western carriers to maintain higher classification and higher rates than prevail in the East. *German Kali Works, Inc., v. A. T. & S. F. Ry Co.* 223 (224).

Louisville's position on the Ohio River, and as a railroad center, operates to give it rates which Lebanon may not reasonably claim. *Lebanon Commercial Club v. L. & N. R. R. Co.* 301 (303).

Admitted that towns are prosperous, but it is contended that by virtue of their location they are entitled to compete for local trade, and that they are greatly handicapped by discriminatory rate adjustment. *Town of Pelham v. A. C. L. R. R. Co.* 433 (437).

Carriers have recognized the advantage of St. Louis's location on the Mississippi River in the rates on sugar, but have denied her this advantage of location with respect to the rate on coffee. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (486).

Geographical location of Memphis is not such as to warrant a differential in favor of St. Louis of 16 cents in the rates on imported burlap from New York. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (547).

Amarillo's disadvantage found to be due to its location. *Bryant Co. v. Ft. W. & D. C. Ry. Co.* 594 (596).

Free drayage service necessitated by comparative disadvantage of location of station with competitor to the industrial section of city. *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (642).

Location of plant and the commercial control of the price of glucose are working adversely to the complainant's interests. *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (674).

Contention that Omaha is not given benefit of its natural advantage as primary market, not sustained. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (685).

**LONG AND SHORT HAUL.** *See also* INTERMEDIATE RATES.

Advances necessary to avoid fourth section violations. Transcontinental Rates from Group F, 1 (5); *Wausau Advancement Asso. v. C. & N. W. Ry. Co.* 459 (460).

Fourth Section applications not passed upon. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (159); *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (185); *Mayor & City Council of Vienna v. G. S. & F. Ry. Co.* 173 (177).

Questions not passed upon. *Town of Pelham v. A. C. L. R. R. Co.* 433 (436); *Montezuma v. C. of G. Ry. Co.* 280.

Discrimination in favor of Chattanooga from interior eastern points justified in order to avoid violations of section four. *Atlanta Journal Co. v. S. A. L. Ry.* 186 (190).

While zone rates established may involve moving of traffic from lower through a higher group, a disregard of section four, same thing happens in central freight association territory with no inequitable results. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 193 (201).

Respondent allowed to make less charge than is made to intermediate points on prepared sizes of anthracite coal, all-rail, from anthracite region to Boston, and other specified Massachusetts points. *In re Coal Rates from Anthracite Region to Points on New Haven Railroad*, 235.

**LONG AND SHORT HAUL—Continued.**

New schedule proposed to establish higher rates to intermediate points, thereby creating violations of section four. To correct this it was stated that the rate to the farther distant point would be increased. *Kansas-Iowa Brick Rates*, 285 (286).

Application to continue lower class rates from Alton to Louisville than rates concurrently in effect from Alton to Henderson, Owensboro, and points west thereof denied. *Alton Board of Trade v. C. & A. R. R. Co.* 589 (593). Lower rate in effect to farther distance point forced by short-line competition, justified. *Thomas Iron Co. v. P. R. R. Co.* 608 (609).

A rate otherwise reasonable is not shown to be unduly low by the presence in the carrier's tariffs of a higher rate for a shorter distance involving a fourth section violation. Adjustment should be made with respect to the latter rate. *Iowa-Minnesota Cement Rates*, 477 (482).

**LONG HAUL.**

Reductions fall most heavily upon long-haul traffic. In re *Express Rates*, 132 (147).

Differentials above rates to basing points may be higher where long-haul traffic to local stations is meager. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (165).

**LOSS AND DAMAGE.**

Carrier can not by tariff provision exempt itself from liability to shipper for loss of property in transit. In re *Weighing of Freight by Carriers*, 7 (30).

**LOW RATES.**

Cheapness, slight risk of loss or damage, and heavy loading make salt entitled to. *Gotttron Bros. Co. v. G. & W. R. R. Co.* 38 (43).

Usually mean inferior service. *Mississippi River Case*, 47 (57).

Wooden lard tubs regarded as low-grade commodity. *Northwestern Wood-eware Co. v. C. M. & P. S. Ry. Co.* 237 (239).

Brick is a desirable traffic and should be accorded a low rate as compared with most other traffic. *Brick Rates from Ohio Points to Huntington*, W. Va. 292 (297).

Scrap iron is a very low-grade commodity which loads heavily and which should therefore move under a low rate. *Scrap Iron Rates Between Chicago, Ill., and Milwaukee, Wis.*, 525.

Carriers not justified in increasing rate claimed to be unduly low which is established under compulsion of competitive conditions. *Grain Rates in C. F. A. Territory*, 549 (557).

Rail rates must be kept so low that river boats can not live on them. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (574).

While rates to Shreveport may be abnormal via circuitous routes, due to competition, this fact does not prove that the rates by direct routes are abnormal. *Id.* 569 (577).

**LOWER MISSISSIPPI RIVER CROSSINGS.**

Include St. Louis, Louisiana, and Hannibal, Mo., and Quincy, Ill. *Mississippi River Case*, 47 (48).

**MAIN LINE. See also BRANCH LINE.**

Same charge imposed for movement between a point on terminal tracks and the connecting tracks of another railroad as for movement for the same distance on main line. *Waverly Oil Works v. P. R. R. Co.* 621 (625).

**MAKING RATES.**

Contracts can not be accepted as basis for making rates. In re *Express Rates*, 132 (141).

**MALT.**

Three-quarters of the malt produced in this country is manufactured in the west. *Milwaukee Maltsters' Traffic Asso. v. G. T. W. Ry. Co.* 489 (490).

Process of malting described. *Id.* 489 (490).

**MANUFACTURED PRODUCTS.** *See also* RAW MATERIAL, BY-PRODUCTS.

In the south manufactured products and crude products are rated alike.

*German Kali Works, Inc., v. A. T. & S. F. Ry. Co.* 223 (225).

Brooms, as a manufactured article, should, in accordance with accepted principles, pay a rate higher than broom corn, which is a raw material. *Broom Rates to Colorado Points*, 310 (311).

It never happens, except under very abnormal conditions, that the rate on malt is lower than on the grain out of which the malt is manufactured. *Grain Rates in C. F. A. Territory*, 549 (551).

Rate charged on glucose, the manufactured product, is 70 per cent greater than the rate charged on corn, the raw material. *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (674).

**MAPS.**

Transcontinental Rates from Group F, 1 (2); Board of Trade of Carrollton *v. C. of G. Ry. Co.* 154 (156, 158); Meridian Board of Trade & Cotton Exchange *v. A. G. S. R. R. Co.* 360 (361); Mayor and Council of Douglas *v. A. B. & A. R. R. Co.* 445 (449).

**MARKET COMPETITION.** *See also* COMPETITION.

As defense to basing-point system of rate making. Board of Trade of Carrollton *v. C. of G. Ry. Co.* 154 (160).

**MARKET VALUE.**

Where shipper refused to state, as required by tariff, the market value of shipment of stocks and bonds, the carrier was under no obligation to transport such securities and it was its duty to refuse the shipment. *Acme Portland Cement Co. v. Am. Exp. Co.* 316.

**MARKETS.**

If, when viewed in the light of those considerations which enter into proper rate making, a particular rate is fair and just for the service performed, the price at which the shipper markets his product can not be accepted as the controlling factor in fixing the rate. *Oklahoma-Colorado Potato Rates*, 298 (300).

Different markets available for manufactured and by-products. Under ruling of Commission only manufactured products entitled to transit rates to billed destination. *Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.* 364 (365).

A carrier should not be permitted to retain to itself the lumber market at points on its line for the benefit of producing points on its line, to the exclusion of producing points on other lines. *Lumber Rates Texas etc., to Oklahoma and Missouri*, 471 (474).

Prices on imported burlap differ at "spot" markets. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (545).

Market quotations offered to show advantage enjoyed by Omaha over Kansas City. There is no difference in the intrinsic value of like grain in the two markets and it is not within our province to adjust rates merely to equalize market conditions. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (686).

**MARKING PACKAGES.**

Different address on package than on bill of lading prepared by shipper. *American Agricultural Chemical Co. v. B. & A. R. R. Co.* 398 (400).

**MARKING PACKAGES—Continued.**

Waybill and label need be attached to only one package in a shipment of two or more packages of perishable freight. In re Express Rates, 132 (136).

**MASTER SCALE.**

Access should be had to, to make certain of correctness of test car. In re Weighing of Freight by Carriers, 7 (12).

**MEASURE OF RATES.****ELEMENTS CONSIDERED.**

*Absorption.*—Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co. 93 (108); Detroit Switching Charges, 494 (496); Waverly Oil Works v. P. R. R. Co. 621 (627); Kansas City & M. Ry. Co. Rate Cancellation, 640 (643); Becker v. P. M. R. R. Co. 645 (653).

*Additional Service.*—Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co. 93 (112); American Brake Shoe & Foundry Co. v. B. Ry. Co. of C. 350.

*Adjustment of Rates.*—Mississippi River Case, 47; Colorado Mfra. Asso. v. A. T. & S. F. Ry. Co. 82 (88); Mayor and City Council of Vienna v. G. S. & F. Ry. Co. 173 (176); Lagrange Chamber of Commerce v. A. & W. P. R. R. Co. 178 (183); Atlanta Journal Co. v. S. A. L. Ry. 186 (188); Iowa State Board of R. R. Com'rs v. A. E. R. R. Co. 193 (197); Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250.

*Advantages.*—Transcontinental Rates from Group F. 1 (4); Board of Trade of Carrollton v. C. of G. Ry. Co. 154 (168).

*Advertising.*—Volco Mfg. Co. v. A. T. & S. F. Ry. Co. 289 (290).

*Allowances.*—Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co. 93 (101); Milwaukee Maltsters' Traffic Asso. v. G. T. W. Ry. Co. 489.

*Analogous Articles.*—German Kall Works, Inc., v. A. T. & S. F. Ry. Co. 223 (229).

*Any-Quantity Rates.*—Taylor Dry Goods Co. v. M. P. Ry. Co. 205 (209).

*Arbitraries.*—One and two line hauls. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co. 563 (567).

*Back Haul.*—Mayor and Council of Douglas v. A. B. & A. R. R. Co. 445 (451); Omaha Grain Exchange v. C. R. I. & P. Ry. Co. 690 (696).

*Basing Point System.*—Board of Trade of Carrollton v. C. of G. Ry. Co. 154 (165).

*Betterments.*—New York Butter and Cheese Rates, 330; U. S. v. U. P. R. R. Co. 518 (523).

*Both Directions.*—Mississippi River Case, 47 (60); Colorado Mfra. Asso. v. A. T. & S. F. Ry. Co. 82 (89); Carnegie Board of Trade v. P. Co. 122 (126); Board of Trade of Carrollton v. C. of G. Ry. Co. 154 (167); Volco Mfg. Co. v. A. T. & S. F. Ry. Co. 289 (291); Oklahoma-Colorado Potato Rates, 298 (299); Paper Rates from Manitowoc and Milwaukee to Kaukauna, Wis. 305 (306); Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co. 376 (377); Omaha-Oklahoma Fresh-Meat Rates, 454 (458); Grain Rates in C. F. A. Territory, 549 (555); Hull Vehicle Co. v. S. Ry. Co. 619 (620); Marshall Oil Co. v. C. G. W. R. R. Co. 707.

*Branch Line Rates.*—R. R. Com'rs. of Fla. v. A. C. L. R. R. Co. 356 (359).

*Break-Bulk Service.*—Chicago Lighterage Charges, 390.

*Bridges.*—Mississippi River Case, 47 (50); East Dubuque Supply Co. v. I. C. R. R. Co. 425 (427); Iowa State Board of R. R. Com'rs v. A. E. R. R. Co. 563 (568); Alton Board of Trade v. C. & A. R. R. Co. 529 (591); Springfield Commercial Asso. v. P. R. R. Co. 511 (513).

*Bulk.*—Gotttron Bros. Co. v. G. & W. R. R. Co. 38 (42).

## MEASURE OF RATES—Continued.

## ELEMENTS CONSIDERED—Continued.

*By-Products.*—Clinton Sugar Refining Co. v. C. & N. W. Ry. Co. 364; Grain Rates in C. F. A. Territory, 549 (552).

*Car Earnings.*—Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co. 237 (240); National Syrup Co. v. C. & N. W. Ry. Co. 673 (676); Rates on Tin Cans, etc., 247 (249); Broom Rates to Colorado Points, 310 (311); Iowa-Minnesota Cement Rates, 477 (481); Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co. 484 (486); Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (535).

*Car Fitting.*—Patent Vulcanite Co. v. A. & W. Ry. Co. 610 (611).

*Car Revenue.*—Commodity Rates Between Missouri River Points, 265 (268); Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (539).

*Carload Rates.*—Taylor Dry Goods Co. v. M. P. Ry. Co. 205; Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co. 376 (378); New England Electric Co. v. C. R. I. & P. Ry. Co. 418.

*Carload and Less-than-Carload.*—Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co. 376 (377); Keats Auto Co. v. O. W. R. R. & N. Co. 412 (413); Rates on Packing-House Products, 599 (600); R. R. Com'rs. of Fla. v. S. Exp. Co. 634 (635).

*Circuitous Route.*—Transcontinental Rates from Group F, 1 (4); Rates on Cottonseed and Its Products, 219 (221); Haverhill Box Board Co. v. B. & A. R. R. Co. 336; Grain Rates in C. F. A. Territory, 549 (553); Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 563 (567); Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569 (577); Alton Board of Trade v. C. & A. R. R. Co. 589 (593); Waverly Oil Works v. P. R. R. Co. 621 (630).

*Circumstances and Conditions.*—Mississippi River Case, 47 (55); Board of Trade of Carrollton v. C. of G. Ry. Co. 154 (167).

*Climatic Conditions.*—National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co. 215 (217).

*Combination Rates.*—Interior Iowa Cities Case, 64 (68); Lagrange Chamber of Commerce v. A. & W. P. R. R. Co. 178 (181); Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 193 (194); 563 (568); Taylor Dry Goods Co. v. M. P. Ry. Co. 205 (213); Boston Chamber of Commerce v. A. T. & S. F. Ry. Co. 230 (232); California-Nevada Lumber Rates, 313 (315); Omaha-Oklahoma Fresh-Meat Rates, 454 (458); Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co. 529 (532); Grain Rates in C. F. A. Territory, 549 (550).

*Commercial and Economic Conditions.*—Mississippi River Case, 47 (55); Taylor Dry Goods Co. v. M. P. Ry. Co. 205 (207); R. R. Com'rs of Fla. v. S. Exp. Co. 634 (637); Oklahoma-Colorado Potato Rates, 298 (300); Arizona Corporation Commission v. A. T. & S. F. Ry. Co. 428 (430); Alton Board of Trade v. C. & A. R. R. Co. 589 (591); National Syrup Co. v. C. & N. W. Ry. Co. 673 (674).

*Comparative Rates.*—Carnegie Board of Trade v. P. Co. 122 (129); Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 193 (196); Molasses Rates from Mobile, 666 (670); Broom Rates to Colorado Points, 310 (312); Iowa-Minnesota Cement Rates, 477 (481); Omaha Grain Exchange v. C. R. I. & P. Ry. Co. 680 (681); Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co. 484 (487, 488); Taylor Dry Goods Co. v. M. P. Ry. Co. 205 (211); Lumber Rates Texas, etc., to Oklahoma and Missouri, 471 (476); East Dubuque Supply Co. v. I. C. R. R. Co. 425 (427); Fairmont Creamery Co. v. A. T. & S. F. Ry. Co. 661 (662);

**MEASURE OF RATES—Continued.****ELEMENTS CONSIDERED—Continued.**

Lee Co. v. I. C. R. R. Co. 515; National Syrup Co. v. C. & N. W. Ry. Co. 673 (674); Grain Rates in C. F. A. Territory, 549 (551); Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co. 701 (702); Atlanta Journal Co. v. S. A. L. Ry. 186 (190); German Kali Works, Inc., v. A. T. & S. F. Ry. Co. 223 (226); Patent Vulcanite Co. v. A. & W. Ry. Co. 610 (612); Gotttron Bros. Co. v. G. & W. R. R. Co. 38 (43); Scrap Iron Rates Between Duluth and Chicago, 467 (470); Scrap Iron Rates Between Chicago and Milwaukee, 525; Silgo Iron Store Co. v. St. L. & S. F. R. R. Co. 616 (618); Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co. 237 (240); Massachusetts-Maine Wool Rates, 396 (397).

*Compelled Rate.*—Gotttron Bros. Co. v. G. & W. R. R. Co. 38 (39).

*Competition.*—Lagrange Chamber of Commerce v. A. & W. P. R. R. Co. 178 (183); Boston Chamber of Commerce v. A. T. & S. F. Ry. Co. 230 (233); Lebanon Commercial Club v. L. & N. R. R. Co. 301 (304); Columbia Chamber of Commerce v. S. Ry. Co. 339 (344); Elgin Commercial Club v. B. & M. R. R. 380 (381); Boney & Harper Milling Co. v. A. C. L. R. R. Co. 383 (387); Town of Pelham v. A. C. L. R. R. Co. 433 (438); Mayor and Council of Douglas v. A. B. & A. R. R. Co. 445 (450); Scrap Iron Rates Between Duluth and Chicago, 467 (470); Lumber Rates Texas etc., to Oklahoma and Missouri, 471 (475, 476); Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (536); Memphis Freight Bureau v. B. & O. R. R. Co. 543 (546); Grain Rates in C. F. A. Territory, 549; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569; Thomas Iron Co. v. P. R. R. Co. 608 (609); Rates on Soda Ash and Other Commodities, 613; Hull Vehicle Co. v. S. Ry. Co. 619 (620); Molasses Rates from Mobile, 666 (671); Omaha Grain Exchange v. C. R. I. & P. Ry. Co. 680 (685).

*Continuous Haul.*—Kansas-Iowa Brick Rates, 285 (286).

*Contracts.*—In re Express Rates, 132 (141); Becker v. P. M. R. R. Co. 645 (655).

*Cost of Construction, Maintenance, and Operation.*—National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co. 215 (217).

*Cost of Production.*—Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250 (262).

*Cost of Service.*—Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co. 93 (101); Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 193 (200); Taylor Dry Goods Co. v. M. P. Ry. Co. 205 (208); National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co. 215 (217); Boston Chamber of Commerce v. A. T. & S. F. Ry. Co. 230 (232); Kansas-Iowa Brick Rates, 285 (286); Elgin Commercial Club v. B. & M. R. R. 380 (381); Detroit Switching Charges, 494 (497); Waverly Oil Works v. P. R. R. Co. 621 (626); R. R. Com'rs. of Fla. v. S. Exp. Co. 634 (637); National Syrup Co. v. C. & N. W. Ry. Co. 673 (674).

*Delivery.*—Haverhill Box Board Co. v. B. & A. R. R. Co. 336 (337).

*Density of Traffic.*—Mississippi River Case, 47 (55); Board of Trade of Carrollton v. C. of G. Ry. Co. 154; German Kali Works, Inc., v. A. T. & S. F. Ry. Co. 223 (224); Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 563 (568); National Syrup Co. v. C. & N. W. Ry. Co. 673 (676).

*Direct Line.*—Grain Rates in C. F. A. Territory, 549 (558); Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569 (572, 580).

**MEASURE OF RATES—Continued.**

**ELEMENTS CONSIDERED—Continued.**

*Distance.*—Gottroen Bros. Co. v. G. & W. R. R. Co. 38 (45); Boston Chamber of Commerce v. A. T. & S. F. Ry. Co. 230 (232); Mississippi River Case, 47 (61); Board of Trade of Carrollton v. C. of G. Ry. Co. 184 (185); Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 193 (195); Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250 (284); Montezuma v. C. of G. Ry. Co. 280 (282); Columbia Chamber of Commerce v. S. Ry. Co. 339 (344); Boney & Harper Milling Co. v. A. C. L. R. R. Co. 383 (388); Lumber Rates Texas etc. to Oklahoma and Missouri, 471 (475, 476); U. S. v. U. P. R. R. Co. 516 (522); Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 563 (566); Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569 (572).

*Division of Rates.*—Interior Iowa Cities Case, 64 (73); Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250 (255); Sandstone, Minn.—Missouri River Building Stone Rates, 269 (273); New Mexico Coal Rates 328; Chicago Lighterage Charges, 390 (392); Oklahoma Grain Rates, 462; Kansas City & M. Ry. Co. Rate Cancellation, 640 (642); Alton Board of Trade v. C. & A. R. R. Co. 589 (592); Waverly Oil Works v. P. R. R. Co. 621 (630).

*Elevation.*—Milwaukee Maltsters' Traffic Assn. v. G. T. W. Ry. Co. 469.

*Equipment, Return of Empty.*—Arizona Corporation, Commissioner v. A. T. & S. F. Ry. Co. 428 (431); Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (536); Chicago Switching Charges, 677 (679); Fairmont Creamery Co. v. A. T. & S. F. Ry. Co. 661 (662); Marshall Oil Co. v. C. & W. R. R. Co. 707 (708).

*Erroneous Rate.*—Waumau Advancement Assn. v. C. & N. W. Ry. Co. 489 (490).

*Estoppel.*—Transcontinental Rates from Group F, 1 (61).

*Expedited Service.*—R. R. Com'rs. of Fla. v. S. Exp. Co. 634 (637).

*Extra Service.*—Becker v. P. M. R. R. Co. 645 (656).

*Factor.*—Interior Iowa Cities Case, 64 (74); California-Nevada Lumber Rates, 313 (315); Omaha-Oklahoma Fresh-Meat Rates, 454 (458) See: Mayer Commission Co. v. C. B. I. & P. Ry. Co. 529 (532); Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co. 701 (702).

*Fares on Train.*—In re Mileage Books, 318 (325).

*Free Movement of Traffic.*—R. R. Com'rs. of Fla. v. S. Exp. Co. 634 (635).

*Graded Rates.*—Interior Iowa Cities Case, 64 (75); Cedar Rapids Commercial Club v. C. B. I. & P. Ry. Co. 76 (80).

*Grades.*—Arizona Corporation Commission v. A. T. & S. F. Ry. Co. 428 (430); Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 568 (572).

*High-Grade Articles.*—Boston Chamber of Commerce v. A. T. & S. F. Ry. Co. 230 (233).

*In-and-Out Rates.*—Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569 (576).

*Industrial Rates.*—Oklahoma Grain Rates, 462 (465); Lumber Rates, Texas etc. to Oklahoma and Missouri, 471 (474); Springfield Commercial Assn. v. P. R. R. Co. 511 (514).

*Intermediate Rates.*—Columbia Chamber of Commerce v. S. Ry. Co. 339 (349); Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 568 (569).

*Investment.*—Detroit Switching Charges, 494 (497); Kansas City & M. R. Co. Rate Cancellation, 640 (642).

## MEASURE OF RATES—Continued.

## ELEMENTS CONSIDERED—Continued.

*Land-Grant Deductions.*—U. S. v. U. P. R. R. Co. 518 (521).

*Leases.*—Omaha Grain Exchange v. A. T. & S. F. Ry. Co. 664; Molasses Rates from Mobile, 666 (668).

*Less-Than-Carload Rates.*—German Kali Works, Inc., v. A. T. & S. F. Ry. Co. 223 (228); Rates on Packing-House Products, 599 (600); R. R. Com'rs. of Fla. v. S. Exp. Co. 634 (638).

*Like Kinds of Traffic.*—Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co. 484 (487).

*Limited Liability.*—In re Express Rates, 132 (137).

*Line-Hauls.*—Mississippi River Case, 47 (56); Rates on Cottonseed and Its Products, 219 (221); Detroit Switching Charges, 428 (432); U. S. v. U. P. R. R. Co. 518 (523); Memphis Freight Bureau v. B. & O. R. R. Co. 543 (547); Iowa State Board of R. R. Com'rs v. A. E. R. R. Co. 563 (567); Alton Board of Trade v. C. & A. R. R. Co. 589 (592); Waverly Oil Works v. P. R. R. Co. 621 (630).

*Loading.*—Gottron Bros. Co. v. G. & W. R. R. Co. 38 (43); Klauer Mfg. Co. v. A. T. & S. F. Ry. Co. 508 (509); Taylor Dry Goods Co. v. M. P. Ry. Co. 205 (208).

*Local Rates.*—Interior Iowa Cities Case, 64 (69); Boston Chamber of Commerce v. A. T. & S. F. Ry. Co. 230 (234); Sandstone, Minn.—Missouri River Building Stone Rates, 269 (273); Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250 (252); Boney & Harper Milling Co. v. A. C. L. R. R. Co. 383 (388); Kansas City & M. Ry. Co. Rate Cancellation, 640 (643).

*Location.*—Transcontinental Rates from Group F, 1 (4); German Kali Works, Inc., v. A. T. & S. F. Ry. Co. 223 (224); Lebanon Commercial Club v. L. & N. R. R. Co. 301 (303); Town of Pelham v. A. C. L. R. R. Co. 433 (437); Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co. 484 (486); Memphis Freight Bureau v. B. & O. R. R. Co. 543 (547); Bryant Co. v. Ft. W. & D. C. Ry. Co. 594 (596); Kansas City & M. Ry. Co. Rate Cancellation, 640 (642); National Syrup Co. v. C. & N. W. Ry. Co. 673 (674).

*Long Haul.*—Board of Trade of Carrollton v. C. of G. Ry. Co. 154 (165).

*Market Quotations.*—Omaha Grain Exchange v. C. R. I. & P. Ry. Co. 680 (686).

*Market Value.*—Acme Portland Cement Co. v. Am. Exp. Co. 316.

*Markets.*—Oklahoma-Colorado Potato Rates, 298 (300); Lumber Rates Texas etc., to Oklahoma and Missouri, 471 (474).

*Mileage.*—Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569 (572).

*Narrow-Gauge Line.*—Arizona Corporation Commission v. A. T. & S. F. Ry. Co. 428 (432).

*Nesting.*—Klauer Mfg. Co. v. A. T. & S. F. Ry. Co. 508 (509).

*New Line.*—Detroit Switching Charges, 494 (497).

*Operating Expenses.*—New York Butter and Cheese Rates, 330.

*Out-of-Line-Hauls.*—Becker v. P. M. R. R. Co. 645 (653).

*Packing.*—Gottron Bros. Co. v. G. & W. R. R. Co. 38 (42); Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co. 274 (276); Klauer Mfg. Co. v. A. T. & S. F. Ry. Co. 508 (509).

*Paper Rates.*—R. R. Com'rs. of Fla. v. S. Exp. Co. 634 (635).



## MEASURE OF RATES—Continued.

## ELEMENTS CONSIDERED—Continued.

*Past Rates.*—Mississippi River Case, 47 (54); Lagrange Chamber of Commerce v. A. & W. P. R. R. Co. 178 (184); Paper Rates from Manitowoc and Milwaukee and Kaukauna, Wis. 305 (306); Boney & Harper Milling Co. v. A. C. L. R. R. Co. 383 (388); Oklahoma Grain Rates, 462 (465); Grain Rates in C. F. A. Territory, 549 (555); Chicago Switching Charges, 677 (679).

*Perishable Freight Service.*—Iowa-Minnesota Cement Rates, 477 (481).

*Points Off Line.*—Lagrange Chamber of Commerce v. A. & W. P. R. R. Co. 178 (184); Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250 (258); Montezuma v. C. of G. Ry. Co. 280 (283); Lumber Rates Texas etc., to Oklahoma and Missouri, 471 (474); Molasses Rates from Mobile, 666 (669).

*Potential Competition.*—Scrap-Iron Rates Between Duluth and Chicago, 467 (470); Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co. 484 (488); Memphis Freight Bureau v. B. & O. R. R. Co. 543 (546); Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569 (573).

*Profit.*—Oklahoma-Colorado Potato Rates, 298 (300); R. R. Com'rs. of Fla. v. S. Exp. Co. 634 (635).

*Prosperity.*—Town of Pelham v. A. C. L. R. R. Co. 433 (437); Mayor and Council of Douglas v. A. B. & A. R. R. Co. 445 (450); Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 469 (575, 576).

*Public Interest.*—Haverhill Box Board Co. v. B. & A. R. R. Co. 336 (338); Chicago Lighterage Charges, 390 (395).

*Railroad Center.*—Lebanon Commercial Club v. L. & N. R. R. Co. 301 (303).

*Railroad Competition.*—Board of Trade of Carrollton v. C. of G. Ry. Co. 154 (160); Mayor and City Council of Vienna v. G. S. & F. Ry. Co. 173 (175); Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (537, 538); Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569 (575).

*Raw Material.*—Paper rates from Manitowoc and Milwaukee to Kaukauna, Wis. 305 (307); National Syrup Co. v. C. & N. W. Ry. Co. 673 (674).

*Relative Rates.*—Gotttron Bros. Co. v. G. & W. R. R. Co. 38 (43); Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co. 76; Colorado Mfra. Asso. v. A. T. & S. F. Ry. Co. 82 (90); Board of Trade of Carrollton v. C. of G. Ry. Co. 154 (164); Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 193 (195); Taylor Dry Goods Co. v. M. P. Ry. Co. 205 (210); Meridian Board of Trade & Cotton Exchange v. A. G. S. R. R. Co. 360 (361); Boney & Harper Milling Co. v. A. C. L. R. R. Co. 383 (388); Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (535); Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co. 569; Alton Board of Trade v. C. & A. R. R. Co. 589 (592); Fairmont Creamery Co. v. A. T. & S. F. Ry. Co. 611 (663); Omaha Grain Exchange v. C. R. I. & P. Ry. Co. 680 (684).

*Revenue.*—Mississippi River Case 47 (57); In re Express Rates, 132 (144); Rates on Tin Cans, etc., 247 (249); Kansas-Iowa Brick Rates, 285 (287); Keats Auto Co. v. O.-W. R. R. & N. Co. 412 (413); Mayor and Council of Douglas v. A. B. & A. R. R. Co. 445 (453); Molasses Rates from Mobile, 666 (667, 669).

*Risk.*—Gotttron Bros. Co. v. G. & W. R. R. Co. 38 (43); Keats Auto Co. v. O.-W. R. R. & N. Co. 412 (413); Klauer Mfg. Co. v. A. T. & S. F. Ry. Co. 508 (509); Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co. 688 (691).

## MEASURE OF RATES—Continued.

## ELEMENTS CONSIDERED—Continued.

*Routes.*—Haverhill Box Board Co. v. B. & A. R. R. Co. 336 (338); Omaha Grain Exchange v. C. R. I. & P. Ry. Co. 680 (686).

*Short Haul.*—Mayor and Council of Douglas v. A. B. & A. R. R. Co. 445 (453).

*Short Line.*—Omaha Grain Exchange v. C. R. I. & P. Ry. Co. 680 (684); Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 563 (567).

*Stuck Ownership.*—Kansas-Iowa Brick Rates, 285 (287).

*System.*—Kansas-Iowa Brick Rates, 285 (287); Memphis Freight Bureau v. B. & O. R. R. Co. 543 (547); Waverly Oil Works v. P. R. R. Co. 621 (625).

*Terminals.*—Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 193 (200); Waverly Oil Works v. P. R. R. Co. 621 (624, 625).

*Terminal Services.*—Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 193 (202); Boston Chamber of Commerce v. A. T. & S. F. Ry. Co. 230 (231); Kansas-Iowa Brick Rates, 285 (286).

*Ton Per Mile Earnings.*—Gotttron Bros. Co. v. G. & W. R. R. Co. 38 (43); Mississippi River Case, 47 (60); Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co. 76 (78); Atlanta Journal Co. v. S. A. L. Ry. 196 (191); Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250 (255); Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co. 484 (486).

*Ton Per Mile Rates.*—Gotttron Bros. Co. v. G. & W. R. R. Co. 38 (45); Boston Chamber of Commerce v. A. T. & S. F. Ry. Co. 230 (232); Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250 (255); Kansas-Iowa Brick Rates, 285 (287); Brick Rates from Ohio points to Huntington, W. Va., 292 (295); Broom Rates to Colorado Points, 310 (311); Lumber Rates Texas etc., to Oklahoma and Missouri, 471 (475); Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (535); Grain Rates in C. F. A. Territory, 549 (558); Omaha-Wisconsin Grain Rates, 602 (604); Thomas Iron Co. v. P. R. R. Co. 608 (609); Fairmont Creamery Co. v. A. T. & S. F. Ry. Co. 661; National Syrup Co. v. C. & N. W. Ry. Co. 673 (676); Omaha Grain Exchange v. C. R. I. & P. Ry. Co. 680 (683, 684); Marshall Oil Co. v. C. G. W. R. R. Co. 707 (708).

*Tonnage.*—Mississippi River Case, 47 (55); Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co. 484 (485, 487); Waverly Oil Works v. P. R. R. Co. 621 (622, 623); Omaha Grain Exchange v. C. R. I. & P. Ry. Co. 680 (686).

*Tractive Power.*—Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (536).

*Train Earnings.*—Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (535).

*Train-Mile Revenue.*—Carnegie Board of Trade v. P. Co. 122 (128).

*Train Speed.*—Haverhill Box Board Co. v. B. & A. R. R. Co. 336 (337); Becker v. P. M. R. R. Co. 645 (653).

*Trainloads.*—Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (536); R. R. Com'rs. of Fla. v. S. Exp. Co. 634 (636).

*Transfer.*—Mississippi River Case, 47 (57); Boston Chamber of Commerce v. A. T. & S. F. Ry. Co. 230 (231).

*Transportation Conditions.*—Gotttron Bros. Co. v. G. & W. R. R. Co. 38 (42); Mississippi River Case, 47 (57).

*Two-Line Hauls.*—Mississippi River Case, 47 (59); Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250 (264); Lumber Rates Texas etc., to Oklahoma and Missouri, 471 (473); Springfield Commercial Asso. v. P. R. R. Co. 511 (513); Memphis Freight Bureau v. B. & O. R. R. Co.

**MEASURE OF RATES—Continued.****ELEMENTS CONSIDERED—Continued.**

543 (547); Iowa State Board of R. R. Com'rs. *v. A. E. R. R. Co.* 563 (567); Thomas Iron Co. *v. P. R. R. Co.* 608 (609); Waverly Oil Works *v. P. R. R. Co.* 621 (631).

*Use.*—Paper Rates from Manitowoc and Milwaukee to Kaukauna, Wis. 305 (307); Sligo Iron Store Co. *v. St. L. & S. F. R. R. Co.* 616 (617).

*Value of commodity.*—In re Express Rates, 132 (138); Acme Portland Cement Co. *v. Am. Exp. Co.* 316; Schmidt & Peters, Inc., *v. A. T. & S. F. Ry. Co.* 376 (378); New England Electric Co. *v. C. R. I. & P. Ry. Co.* 418 (419); Scrap Iron Rates Between Chicago and Milwaukee, 525; Grain Rates in C. F. A. Territory, 549 (553); Iowa State Board of R. R. Com'rs *v. A. E. R. R. Co.* 563 (567); Molasses Rates from Mobile, 666 (670); National Syrup Co. *v. C. & N. W. Ry. Co.* 673 (674); Omaha Grain Exchange *v. C. R. I. & P. Ry. Co.* 680 (686).

*Value of properties.*—Sheridan Chamber of Commerce *v. C. B. & Q. R. R. Co.* 250 (256); East Dubuque Supply Co. *v. I. C. R. R. Co.* 425 (427); Detroit Switching Charges, 494 (497); Omaha Grain Exchange *v. A. T. & S. F. Ry. Co.* 664; Molasses Rates from Mobile, 666.

*Value of service.*—Taylor Dry Goods Co. *v. M. P. Ry. Co.* 205 (212); Storage Charges in C. F. A. Territory, 372 (374).

*Volume.*—Iowa State Board of R. R. Com'rs *v. A. E. R. R. Co.* 193 (200); Taylor Dry Goods Co. *v. M. P. Ry. Co.* 205 (209); German Kali Works, Inc., *v. A. T. & S. F. Ry. Co.* 223 (224); Sandstone, Minn.—Missouri River Building Stone Rates, 269 (271); Scrap-Iron Rates between Duluth and Chicago, 467 (468); Hull Vehicle Co. *v. S. Ry. Co.* 619 (620); Marshall Oil Co. *v. C. G. W. R. R. Co.* 707 (708).

*Voluntary rates.*—Rates on Cottonseed and Its Products, 219 (221); Sheridan Chamber of Commerce *v. C. B. & Q. R. R. Co.* 250 (257); In re Advances on Livestock, 332 (334).

*Water competition.*—Gottron Bros. Co. *v. G. & W. R. R. Co.* 38 (42); Board of Trade of Carrollton *v. C. of G. Ry. Co.* 154 (159); Lagrange Chamber of Commerce *v. A. & W. P. R. R. Co.* 178 (183); Atlanta Journal Co. *v. S. A. L. Ry.* 186 (189); Taylor Dry Goods Co. *v. M. P. Ry. Co.* 205 (210); Lebanon Commercial Club *v. L. & N. R. R. Co.* 301 (304); Columbia Chamber of Commerce *v. S. Ry. Co.* 339 (347); Meridian Board of Trade & Cotton Exchange *v. A. G. S. R. R. Co.* 360 (361); Schmidt & Peters, Inc., *v. A. T. & S. F. Ry. Co.* 376 (378); Keats Auto Co. *v. O.-W. R. R. & N. Co.* 412 (413); Wausau Advancement Asso. *v. C. & N. W. Ry. Co.* 459 (461); Scrap-Iron Rates Between Duluth and Chicago, 467 (470); Traffic Bureau of Nashville *v. L. & N. R. R. Co.* 533 (536); Texarkana Freight Bureau *v. St. L. I. M. & S. Ry. Co.* 569.

*Weak line.*—Sheridan Chamber of Commerce *v. C. B. & Q. R. R. Co.* 250 (256).

*Weight.*—Massachusetts-Maine Wool Rates, 396 (397).

*Wharves.*—R. R. Com'rs of Fla. *v. A. C. L. R. R. Co.* 356 (358).

**MERCHANDISE CARS.**

In addition to daily merchandise cars for concentrated less-than-carload freight between certain points, the U. P. operates daily from Chicago to Pocatello five merchandise cars. U. S. *v. U. P. R. R. Co.* 518 (523).

**MILEAGE.**

Defendants allege that direct line should not be used in figuring comparative mileages because trains must be operated over heavy grades. Texarkana Freight Bureau *v. St. L. I. M. & S. Ry. Co.* 569 (572).

**MILEAGE BOOKS.**

Regulation requiring exchange of coupons from interchangeable mileage books for mileage exchange tickets before commencing journey not found discriminatory or otherwise in violation of act. *In re Mileage Books*, 318. While the issuance of mileage by carriers may be voluntary, conditions attached to the use thereof must not make discriminations or other positive wrongs forbidden by the act. *Id.* 318.

**MILEAGE RATES.**

Mileage scale of interstate class and commodity rates established applicable between points in Iowa and points in Nebraska and Kansas. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 193 (203); *Id.* 563 (565).

Rates to Aurora are a projection of the basis and method of computing the central freight association territory percentage scale, while rates to Elgin are not based on the mileage scale but are built on what is called the Sycamore basis. *Elgin Commercial Club v. B. & M. R. R.* 390 (382).

Establishment of rates on mileage basis instead of group adjustment not warranted by commercial conditions. *Arizona Corporation Commission v. A. T. & S. F. Ry. Co.* 428 (430).

Prescribed by Commission in another proceeding used as factor in combination through rate. *Omaha-Oklahoma Fresh-Meat Rates*, 454 (456).

Mileage scale applicable to class rates prescribed by Commission without fixing uniform relation between classes. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 563 (565).

Central freight association territory. *Mississippi River Case*, 47 (61).

**MILEAGE TICKETS.**

If it were not for the provisions of section 22, it is debatable whether the concession from the regular fare would be lawful. *In re Mileage Books*, 318 (323).

**MILLING IN TRANSIT. See TRANSIT PRIVILEGES.****MINE RATINGS. See also CAR DISTRIBUTION.**

Upon the basis of the month within a period of full car supply showing the highest average of daily shipments. *National Coal Co. v. B. & O. R. R. Co.* 442 (443).

The C. & S. E., which is a plant facility of the Victor-American mines, operates by trackage agreement over lines of other carriers. The inclusion of the mines of the C. & S. E. in the ratings of the D. & R. G. and C. & S. R. R. works an undue discrimination. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (507).

**MINIMUM CHARGE.**

Minimum charge rule applicable to returned empty beer packages not found unreasonable. *Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co.* 688.

**MINIMUM RATE.**

The Commission is not authorized to fix a minimum rate. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (547).

**MINIMUM WEIGHTS.**

Of 41,500 pounds on wooden lard tubs found unreasonable and lower minimum established. *Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co.* 237 (242).

Established by carriers are intended reasonably to comport with loading capacity of cars as to particular commodities to which they relate. *Id.* 237 (242).

For furniture graduated according to the length of the car based upon 16,000 pounds for 36-foot equipment. *Commodity Rates Between Missouri River Points*, 265 (266).

**MINIMUM WEIGHTS—Continued.**

No opinion expressed on request to reduce minimum that respondent did not propose to advance. Classification of Iron and Steel Window Frames and Sash, 500.

Minimum of 18,000 pounds, 36-foot car, for incubators and brooders. *Lee Co. v. I. C. R. R. Co.* 515 (516).

**MISROUTING. See also ROUTING.**

Where bills of lading and shipping orders are prepared by the shipper and the shipper notes upon the bill of lading certain instructions which it fails to note on the shipping order, the carrier can not be held liable for misrouting if it complies with the instructions shown on the shipping order. *American Agricultural Chemical Co. v. B. & A. R. R. Co.* 398 (401).

Demurrage, drayage, and switching charges not found to have been result of carriers negligence in routing. *Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co.* 703 (705).

**MISSISSIPPI RIVER TERRITORY.**

Includes the territory between the Mississippi and the Missouri, practically the entire State of Iowa being included. *Iowa State Board of R. R. Com'rs v. A. E. R. R. Co.* 193 (198, 199).

**MISSOURI RIVER TERRITORY.**

Embraces points upon that river, a considerable amount of territory to the west and very limited territory to the east. *Iowa State Board of R. R. Com'rs v. A. E. R. R. Co.* 193 (197).

**MISTAKE. See ERROR.****MIXED CARLOADS.**

Muriate of potash, sulphate of potash, kainit, double manure salts, manure salts, sylvinit, and hartsalz may be shipped in mixed carloads at the fifth class rate with minimum carload weight of 40,000 pounds. *German Kali Works, Inc. v. A. T. & S. F. Ry. Co.* 223 (229).

Rules in western and official classifications prescribing basis for charges upon packages containing premiums not found unreasonable. *Minneapolis Cereal Co. v. C. & N. W. Ry. Co.* 415.

Privilege of mixing carloads of wrought-iron conduit pipe and fittings should be granted where same commodity rate in effect on straight carloads of pipe and straight carloads of pipe fittings. *New England Electric Co. v. C. R. I. & P. Ry. Co.* 418.

Rates on bananas and coconuts in mixed carloads and on coconuts in straight carloads should be no higher than on bananas in straight carloads. *Bryant Co. v. Ft. W. & D. C. Ry. Co.* 594 (596, 598).

**NARROW-GAUGE LINE.**

Necessary to transfer contents of cars at junction point. *Arizona Corporation Commission v. A. T. & S. F. Ry. Co.* 428 (432).

**NAVIGABLE.**

Level of Red River at Shreveport. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (574).

**NESTING.**

Generally agreed that nesting of culverts was frequently injurious, and that nested culverts of the larger sizes are much more difficult to handle than the individual culverts, loading and unloading being done by hand. *Klauer Mfg. Co. v. A. T. & S. F. Ry. Co.* 508 (509).

**NEW LINE.**

Receipts less than cost of operation *Detroit Switching Charges*, 494 (497).

**NEW YORK-CHICAGO RATES.**

Increases since 1907. Grain Rates in C. F. A. Territory, 549 (559).

**NOMINAL RENTAL.**

Discriminatory practice of leasing elevators at unduly low rental or operating same through subsidiary corporation discontinued. *Omaha Grain Exchange v. A. T. & S. F. Ry. Co.* 664.

**NONAGENCY STATION.**

Shipment forwarded to nonagency point not found to have been misrouted. *Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co.* 703 (705).

**NONCOMPETITIVE RATES.**

The system commonly in use in the southeast of making rates to local or noncompetitive points is by making such rates higher than those to common or competitive points by certain differentials or locals. *Mayor and Council of Vienna v. G. S. & F. Ry. Co.* 173 (174).

Division received to next more distant common point accepted as rate to local or noncompetitive points thus securing benefit of competition to more distant common point. *Id.* 173 (175).

Basis of rate making to Lagrange is that commonly in use to noncompetitive points in the southeast; that is, the lowest combination on near-by competitive points. *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (180).

Divisions accruing to more distant common or basing points accepted as rates to noncompetitive points. *Id.* 178 (182).

**NOTICE.**

Request for notification to shippers of failure or refusal of consignees to accept or remove shipments of explosives should be placed on different colored label than that prescribed by Commission's regulation. *Storage Charges in C. F. A. Territory*, 372 (375).

Notice should be given consignees before arrival of cars at destination, and if disposition is not made a charge of \$2 per car for reconsignment should be assessed. *Becker v. P. M. R. R. Co.* 645 (656).

Rule that agents shall decline to receive shipments of freight "to order," with directions to notify parties elsewhere than at destination point, not found unreasonable. *Ludowici-Celadon Co. v. A. C. L. R. R. Co.* 693.

The lower export rate having been in effect for more than six months prior to the date of the first shipment, complainant was charged with notice thereof. *Port Arthur Rice Milling Co. v. T. & Ft. S. Ry. Co.* 697 (700).

**OCEAN-AND-RAIL RATES.**

Atlanta and Chattanooga have same rates from eastern port cities via ocean and rail. *Atlanta Journal Co. v. S. A. L. Ry.* 186 (189).

Through charges via, from Atlantic seaboard through the Gulf ports to Denver not unreasonable. *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 82 (91).

**OCEAN CARRIAGE.**

The average time consumed in the transportation of burlap from Calcutta to Boston and New York is about 60 days, and to New Orleans 90 days. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (544).

**OCEAN CARRIERS.**

Equalized rates on coffee from Brazil to New Orleans and New York. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484.

**OCEAN RATES.**

Difference in rates between north Atlantic and Gulf ports equalized in total through rates from foreign port to St. Louis. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (544, 546).

**OPERATING EXPENSES.**

Cost of betterments charged to operating expenses no justification for increase in rates. *New York Butter and Cheese Rates*, 330.

**OPERATION OF SCALES.**

Discussed. In re Weighing of Freight by Carriers, 7 (14).

**ORDER NOTIFY.**

Rule that agents shall decline to receive shipments of freight "to order," with directions to notify parties elsewhere than at destination point, not found unreasonable. *Ludowici-Celadon Co. v. A. O. L. R. R. Co.* 693.

**ORDER OF COMMISSION.**

Rates exposed to analysis and criticism of respondents before issuance of final order. In re Express Rates, 132 (142).

In compliance with order carriers did not adjust the intermediate rates on the basis of the rate prescribed, but merely applied that rate to all intermediate points where it would result in a reduction of the former rate. *Arizona Corporation Commission v. A. T. & S. F. Ry. Co.* 428 (429).

Rates should be established in accordance with order in general express investigation. *R. R. Com'rs of Fla. v. S. Exp. Co.* 634 (639).

In an attempted compliance with the order of the Commission in previous case instead of lowering the rate to Rose Hill the respondents raised the Ravenswood rate. *Chicago Switching Charges*, 677 (678).

**OUT-OF-LINE HAULS.**

Reconsignment at Ludington instead of Milwaukee would avoid out-of-line hauls and the payment of intermediate switching charges, which is absorbed. *Becker v. P. M. R. R. Co.* 645 (653).

**OVERCHARGES. See DAMAGES.****OWNERSHIP.**

Allowances under section 15 can only be made to "the owner of property transported." *Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (102).

**PACKAGE CARS**

Express service desired because shipments to smaller communities are not of sufficient size to warrant movement in carload quantities and the less than carload service by freight is too slow except where package cars are run. *R. R. Com'rs of Fla. v. S. Exp. Co.* 634 (635).

**PACKAGES.**

Weight of, certified by shippers. In re Weighing of Freight by Carriers, 7 (28).

A label need be attached to only one package in each shipment of perishable property, such label to indicate the number of packages in the shipment. In re Express Rates, 132 (136).

Average weight of. *Id.* 132 (145).

Rule in western and official classifications prescribing basis for charges upon packages containing premiums not found unreasonable. *Minneapolis Cereal Co. v. C. & N. W. Ry. Co.* 415.

**PACKING.**

Different rates according to character of container or form in which commodity is shipped, not uncommon. *Gottron Bros Co. v. G. & W. R. R. Co.* 38 (42).

When differentials are not disproportionate to differences in transportation conditions, higher rates on salt in packages than on salt in bulk not unreasonable. *Gottron Bros. Co. v. G. & W. R. R. Co.* 33 (42).

Dissimilarity of circumstances and conditions surrounding the transportation of potatoes in barrels and in hampers fairly warrants some difference in rates. *Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.* 274 (276).

**PACKING—Continued.**

Different ratings requested between less-than-carload shipments of corrugated iron and steel culverts nested and not nested. *Klauer Mfg. Co. v. A. T. & S. F. Ry. Co.* 508 (509).

Method of packing cured meats. Rates on Packing-House Products, 599 (600).

Method of packing prepared roofing described. *Patent Vulcanite Co. v. A. & W. Ry. Co.* 610.

Same rates maintained from New Orleans on blackstrap molasses as on all the higher grades of molasses whether shipped in tank cars or in packages suitable for use by the retail trade. *Molasses Rates from Mobile*, 666 (670).

**PAPER RATES.**

The reasons given for advances are that many of the commodities do not actually move. *Commodity Rates Between Missouri River Points*, 265 (267).

Statement that nothing will be offered for transportation under increased rates, can not be accepted as a justification. *California-Nevada Lumber Rates*, 313 (315).

Same rates extended to Augusta as to Atlanta under established adjustment without regard as to whether traffic actually moves, and that Columbia is not prejudiced by not being accorded same rates. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (348).

During period of reduced rates no shipments made to stations involved in proceeding. *Omaha-Wisconsin Grain Rates*, 602 (604).

While the fact that traffic moves freely has some bearing upon the reasonableness of the rates, it is not true that merely because traffic does not move the rates are therefore unreasonable. *R. R. Com'rs of Fla. v. S. Exp. Co.* 634 (635).

Less-than-carload rates on perishable freight. *Id.* 634 (638).

Frisco participates in joint rates to Fayetteville, although such rates are seldom used as traffic ordinarily moves via its own line direct to that point. *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (644).

While respondent is a party to tariff, it has received a very small proportion of the traffic for the reason that protestants are not inclined to turn over to a connecting line traffic which has originated on their own lines. *Molasses Rates from Mobile*, 666 (671).

**PARCEL POST.**

Establishment of parcel post is not a justification for any higher scale of rates than otherwise would be reasonable. *In re Express Rates*, 132 (152).

**PARITY OF RATES.**

Little ground for parity of rates to and from the southwest as between Kansas City and Duluth, which are at the two extremities of Group F. *Transcontinental Rates from Group F*, 1 (5).

All points on the Missouri River from Kansas City on the south to Omaha and Sioux City on the north, have been on a parity of rates with respect to traffic to and from the east. *Interior Iowa Cities Case*, 64 (66).

From eastern ports the ocean-and-rail rates through Norfolk to Chattanooga are the same as those to Atlanta through Savannah or Charleston. *Atlanta Journal Co. v. S. A. L. Ry.* 186 (189).



**PARTIES.** *See also* DAMAGES.**DAMAGES.**

An award of reparation is due only from a carrier to a shipper and not to one carrier, as a carrier, from another. *Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (108).

Shipments involved were sold f. o. b. destinations, and while the respective consignees paid the freight charges in the first instance, they charged same back to complainant. *Morton Salt Co. v. M. L. & T. R. R. & S. S. Co.* 422 (423).

Freight charges originally paid by the consignees but deducted from complainant's invoice price in the settlement of accounts, so that they were ultimately paid by complainant. *Sligo Iron Store Co. v. St. L. & S. F. R. R. Co.* 616.

Reparation awarded against line which purchased line over which traffic moved. *Marshall Oil Co. v. C. G. W. R. R. Co.* 707 (709).

**COMPLAINANT.**

While the law casts upon the respondents the burden of showing that the increased rates are reasonable, parties at whose instance suspensions are ordered should present to the Commission all facts which, in their opinion, tend to show that the increases should be allowed. *Commodity Rates Between Missouri River Points*, 265 (267).

The provisions of the act with respect to those who may apply to the Commission concerning things done or omitted to be done by common carriers subject thereto are broad. *U. S. v. U. P. R. R. Co.* 518 (520).

**DEFENDANT.**

Whether petition fatally defective because nonjoinder of carriers north of Cincinnati and Louisville, not decided. Had carriers seen fit to adopt joint rates in lieu of the method now in vogue, petitioner could be heard only in a proceeding attacking the through rates. *Boney & Harper Milling Co. v. A. C. L. R. R. Co.* 383 (388).

*Kanawha & Michigan* though not formally a party, was represented at the hearing. Rates on Coal to Milwaukee and other Points, 527 (528).

Insufficient carriers named for Commission to undertake to settle so broad a question as that of the differential relation of Omaha and Kansas City. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (681, 687).

**PASSENGER FARES.** *See also* MILEAGE BOOKS.

Special fares for movement of passengers in guaranteed numbers in one day, without baggage-checking privileges, may be provided by carriers under section 22, but in absence of discrimination Commission has no power to prescribe. *Carnegie Board of Trade v. P. Co.* 122.

**PASSENGER SERVICE.**

Express rates kept high enough to prevent the movement of so great a volume of tonnage as would impair the efficiency of passenger service. *R. R. Com'rs. of Fla. v. S. Exp. Co.* 634 (636).

**PAST RATES.**

As justification of undue preference. *Mississippi River Case*, 47 (54).

Time as undoubted weight in rate matters. *Id.* 47 (54).

No finding as to past rates, and no reparation. *Interior Iowa Cities Case*, 64 (76).

Not found unreasonable, although new adjustment fixed for the future, and damages denied. *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 82 (91).

**PAST RATES—Continued.**

No defense to charge of unjust discrimination between localities to show that adjustment to lower rated point was made years ago and has since been maintained. *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (184).

To a point do not secure rights to that point superior to those of a point now similarly situated from a transportation standpoint, which at time of previous adjustment was local or noncompetitive. *Id.* 178 (184).

The fact that the 5½-cent rate has been in effect for a period of over five years, as a raw-material rate, and that the paper is still used as a raw material, protestants believe establishes its reasonableness. *Paper Rates from Manitowoc and Milwaukee to Kaukauna, Wis.* 305 (306).

Nothing has been produced to convince us that the long-established equalization adjustment, which, in some respects at least, is well adapted to the prevailing conditions, should be disturbed because Wilmington has no shrinkage rate from the upper crossings. *Boney & Harper Milling Co. v. A. C. L. R. R. Co.* 388 (388).

Business built up on through rates. Claims that it will be impossible to continue should combination rates be permitted. *Oklahoma Grain Rates*, 462 (465).

The rate on steam coal to Nashville from western Kentucky mines has remained unchanged for 25 years. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (536).

Change in long-standing relation of proportional rates on grain from upper and lower Mississippi River crossings not justified. *Grain Rates in C. F. A. Territory*, 549 (555).

No other manufacturers having joined in this complaint, or made independent complaint, it is possible that they may be materially affected by a disturbance of an adjustment that has continued for so many years. *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (675).

Where a particular rate has been in effect for several years, the presumption is that it is compensatory, and it will not be disturbed except upon proof that present conditions are such as to demand it. *Chicago Switching Charges*, 677 (679).

**PECUNIARY DAMAGES.**

Complainant has suffered. *Eichenberg v. S. P. Co.* 584 (588).

**PEDDLER-CAR RATES.**

Peddler-car rates fixed at certain percentages above carload rates. *Rates on Packing-House Products*, 599 (600).

**PEORIA TERRITORY.**

As defined in tariff, Iowa divided by a line running east and west, the northern one-third being known as Peoria territory, and took rate between Mississippi River and Chicago. *Iowa State Board of R. R. Com'rs v. A. E. R. R. Co.* 193 (199).

**PER DIEM RECLAIMS.**

Allowance made to switching road of 45 cents per day from trunk line as reward for returning cars before expiration of free time. *Mfra. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (con. 116).

**PERCENTAGE CONTRACTS.**

Commission can not compel percentage contracts between express companies and rail carriers as making legal or moral necessity for higher rates than could be justified otherwise. *In re Express Rates*, 132 (140).

Under percentage contracts expenses can be made to increase faster than revenue whenever contracting parties so desire. *Id.* 132 (150).

**PERCENTAGE RATES.**

As applied to salt traffic. *Gotttron Bros. Co. v. G. & W. R. R. Co.* 38 (45).  
Between interior Iowa points and Chicago found unreasonable, and carriers required to submit for approval a revised basis of such rates grading the 80-cent Missouri River scale back across the State. *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 76.

From trunk-line territory Aurora 104 per cent of New York-Chicago rates; Elgin 110 per cent; Batavia, St. Charles and Geneva, towns between Aurora and Elgin, 104 per cent. *Elgin Commercial Club v. B. & M. R. R.* 380 (381).

Percentage rates are based upon distance. Rates to the various percentage groups are determined by short-line mileage to the more important points located within those groups. *Springfield Commercial Asso. v. P. R. R. Co.* 511 (512).

Peoria, Ill., takes 110 per cent of the New York-Chicago rate on traffic to and from the east. Springfield is in the 117 per cent territory. If Peoria enjoys a rate of 110 per cent, the rate to Springfield should not exceed 113 per cent. *Id.* 511 (514).

Although Illinois is divided into territorial groups, to which percentage rates are applied in case of most commodities, grain rates have not for some time been and are not to-day so stated. *Grain Rates in C. F. A. Territory*, 549 (555).

Rates between the Atlantic and central freight association territory are generally stated in groups at a percentage of the Chicago-New York rate. *Id.* 549 (555).

Percentage rates from Illinois to Atlantic seaboard based on New York-Chicago rate compared with proportional rate to Chicago and reshipping rate beyond. *Id.* 549 (560, 561).

To apply the same percentage relation in class rates in every part of the country would create confusion and discrimination instead of securing uniformity and equal treatment. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 563 (565).

Mileage scale applicable to class rates prescribed by Commission without fixing uniform relation between classes. *Id.* 563 (565).

**PERCENTAGE ZONE TERRITORY.**

West bank of the Mississippi River is west boundary of percentage zone territory, and all crossings, both upper and lower, are under percentage basis of rates with respect to traffic to and from points east of Buffalo and Pittsburgh. *Mississippi River Case*, 47 (50).

**PERISHABLE-FREIGHT SERVICE.**

Lime is a commodity requiring perishable-freight service. *Iowa-Minnesota Cement Rates*, 477 (481).

**PERISHABLE PROPERTY.**

A label need be attached to only one package in each shipment of perishable property, such label to indicate the number of packages in the shipment. *In re Express Rates*, 132 (136).

**PICK-UP AND DELIVERY.**

Respondents shall be required to issue a joint publication wherein the established pick-up and delivery limits shall be specifically defined. *In re Express Rates*, 132.

No fair allowance for pick-up and delivery service on small packages carried short distances under percentage contracts. *Id.* 132 (141).

**PICK-UP AND DELIVERY—Continued.**

Arrangements by which respondents provide receiving depots for shipments of oysters at Baltimore, instead of pick-up wagon service, not found discriminatory. *Atlantic Packing Co. v. American Express Co.* 244.

**PLANT FACILITIES. See also INDUSTRIAL LINES.**

So-called boat line and facilities were private facilities of the sale company and not public transportation facilities, and used as device to defraud the law. *Gottroen Bros. Co. v. G. & W. R. R. Co.* 38 (41).

A lateral branch line of railroad is entitled to a switch connection without regard to its status as plant facility or common carrier. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (505).

**PLATFORM SCALES.**

Grain unloaded upon team tracks weighed on. In re Weighing of Freight by Carriers, 7 (22).

Suggested that board of trade be given jurisdiction over. *Id.* 7 (23).

**PLEADING AND PRACTICE. See also HEARING; ISSUE; PARTIES.**

It is the duty of each party before the Commission to present his case at the proper time, which ordinarily is at the time of original hearing. *Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (95).

This Commission never looks to the niceties of pleading. The mere fact that the word "overcharge" is used instead of "unreasonable exaction" ought not to be permitted to interfere with a trial of the substantial issue presented. *Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.* 364 (367).

While stations named in complaint may furnish a guide to the proper adjustment of remaining stations, we must necessarily confine ourselves to the pleadings and make no finding concerning rates to such remaining stations. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (681).

**POINTS OFF LINE.**

Not essential that a carrier actually reach a point to engage in its traffic or discriminate against it. *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (184).

It is possible for a carrier to discriminate unjustly and unlawfully against a point which it does not reach over its own rails. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (258).

Neither lines reaching points of origin or destination could establish any rate without the concurrence of other lines. We can not, therefore, hold that the situation complained of is within the control of the lines reaching complainant city. *Montezuma v. C. of G. Ry. Co.* 280 (283).

A carrier should not be permitted to retain to itself the lumber market at points on its line for the benefit of producing points on its line to the exclusion of producing points on other lines. *Lumber Rates Texas etc., to Oklahoma and Missouri*, 471 (474).

Discrimination in violation of section 3 not found to result in establishment of lower rate from Mobile than in effect from New Orleans, where line from Mobile does not reach New Orleans, except by connections. *Molasses Rates from Mobile*, 666 (669).

**PORTS OF ENTRY.**

Boston and New York for burlap. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (544).

**POSTAGE-STAMP RATES.**

In most instances rates were same to Pacific coast from all points of origin east of Colorado common-point territory. *Transcontinental Rates from Group F*, 1 (5).

**POTENTIAL COMPETITION.** *See also* **COMPETITION.**

The extent to which a carrier shall lower its rates to meet anticipated competition is a matter primarily for its decision, and should it later raise the rate, the sole question for our determination is whether that increased rate is just and reasonable for the service performed. *Scrap-Iron Rates Between Duluth and Chicago*, 467 (470).

We are not aware of any decisions that if water competition leads to a low rate on one commodity the carriers are required by law to make similar reductions on other commodities subject to actual or potential water competition, whether or not such commodities are competitive with each other. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (488).

Potential competition of water routes have kept rates to Memphis low. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (546).

Active on Mississippi River from St. Louis to New Orleans and Vicksburg and potential on Red River from New Orleans to Shreveport. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (573).

**PREFERENCES AND PREJUDICES.** *See also* **DISCRIMINATION.****ARTICLES.**

Rates on news print paper not unjustly discriminatory as compared with rates on wrapping paper from same points of origin. *Atlanta Journal Co. v. S. A. L. Ry.* 188.

Contention that increase on malt ought not to be made because malt competes with certain other articles usually manufactured from corn and without corresponding increase on these articles is to put the maltster at Chicago at a disadvantage, not sustained. *Grain Rates in C. F. A. Territory*, 549 (551).

**CARRIERS.**

Reciprocal switching discussed in connection with. *Mfra. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (105).

Contention that failure and refusal to establish through routes and joint rates via certain lines subjects those carriers to undue prejudices and disadvantage contrary of the provisions of section 3. *U. S. v. U. P. R. R. Co.* 518 (519).

Practice of interchange switching found to be discriminatory under section 3. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (542).

Practice of interchange switching not found to be discriminatory under section 3. *Waverly Oil Works v. P. R. R. Co.* 621 (628).

**PERSONS.**

Inaccuracies in weighing result in the imposition of unreasonable charges and in discrimination between shippers just as really as do differences in the freight rate itself. *In re Weighing of Freight by Carriers*, 7 (10).

Trunk lines in delivering freight at St. Louis rate to points on Terminal Railroad Association and refusing to bear expense of similar delivery on lines of complainant railway, are not subjecting shippers on latter lines to undue prejudice and advantage. *Mfra. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (105).

A discrimination involves the idea of a relationship between the person favored and the person injured. *In re Mileage Books*, 318 (324).

A practice that is bad only because discriminatory, can always be remedied by withdrawing the benefit from the favored party or by extending it to the injured parties. *Id.* 318 (324).

**PREFERENCES AND PREJUDICES—Continued.****PERSONS—Continued.**

This Commission is not able to agree that the acceptance of the state mileage upon trains and the contemporaneous requirement that interstate mileage must be exchanged for tickets constitute a discrimination against interstate travelers. *Id.* 318 (324).

Carriers' practices in granting free transportation under section 22 must not result in undue preference or prejudice under section 3. *Dairymen's Supply Co. v. P. R. R. Co.* 406 (408).

Damages awarded for failure of complainant to receive equal wharfage facilities at Galveston, Tex. *Eichenberg v. S. P. Co.* 584.

**LOCALITIES.**

Combination of inbound and outbound rates favoring the lower crossings as against the Iowa crossings not justified by differences in mileage, general conditions affecting transportation to and from and through them, the geographic location and the commercial activities of the upper and lower crossings. *Mississippi River Case*, 47 (54).

Circumstances and conditions different, as defense. *Id.* 47 (56).

Class rates to and from upper crossings, westbound and eastbound, unreasonable and discriminatory as compared with rates enjoyed by lower crossings. *Id.* 47 (58).

Maintenance of special fares from Pittsburgh in one direction, while like fares are denied to points west of Pittsburgh, not unjust discrimination. *Carnegie Board of Trade v. P. Co.* 122 (126).

Present rates of respondent express carriers between points named in order herein are unduly prejudicial so far as they exceed rates hereinafter prescribed. *In re Express Rates*, 132 (152).

Although the third section does not carry the phrase embodied in section 2, "under substantially similar circumstances and conditions," it contains the words, "in any respect whatsoever"; and therefore the thought contained in section 2 must be present to the mind in considering under section 3 what preferences or advantages are undue or unreasonable. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (167, 168).

Adding to competitive rates to basing points, differentials or arbitraries which, as component parts of joint through rates, are excessive when total length of haul is considered on rates to noncompetitive points and not adding such differentials to competitive points, held to constitute undue prejudice. *Id.* 154 (167).

One of ways of showing undue prejudice and disadvantage under third section is by showing unreasonableness in rate under first section and then comparing it with rates to similarly located places. *Id.* 154 (164).

Railroad competition not found to justify the discrimination in favor of Cordele. *Mayor and City Council of Vienna v. G. S. & F. Ry. Co.* 173 (175).

No defense to charge of unjust discrimination to show that adjustment to lower rated point was made years ago and has since been maintained. *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (184).

Dissimilarity of competitive conditions as defense to charge of unjust discrimination. *Id.* 178 (183).

Fact that no carrier reaching Opelika also reaches Lagrange no defense, as not essential that carrier reach a point in order to engage in its traffic. *Id.* 178 (184).

## PREFERENCES AND PREJUDICES—Continued.

## LOCALITIES—Continued.

Discrimination in favor of Chattanooga from interior eastern points justified in order to avoid violations of section four. *Atlanta Journal Co. v. S. A. L. Ry.* 186 (190).

That certain cities happen to be assembling points can not give to those points a better freight rate than is enjoyed by towns beyond. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 193 (200).

Maintaining pick-up service on oyster shipments at Norfolk and not maintaining same service at Baltimore not undue discrimination. *Atlantic Packing Co. v. American Exp. Co.* 244 (246).

Carrier can discriminate unjustly and unlawfully against point not on its line. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (258).

Difference in cost of production can not be recognized as a basis for the adjustment of freight rates between different localities. *Id.* 250 (262).

Rates complained of found unjustly discriminatory against Montezuma and dealers thereat, and unduly preferential to Cordele and Americus, Ga., and dealers thereat. *Montezuma v. C. of G. Ry. Co.* 280 (284).

Rates to Louisville vary according to the grade of coal, whereas to Lebanon one rate governs the carriage of all grades. Not found unjustly discriminatory, river and rail competition influencing rates. *Lebanon Commercial Club v. L. & N. R. R. Co.* 301 (304).

Rates from eastern and western points of origin unduly prefer Augusta, Ga., to undue prejudice. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (349).

Rates from Meridian, Miss., to points in Alabama on T. V. and A. T. & N. railroads not found discriminatory in favor of rates from Mobile and Tuscaloosa, Ala. *Meridian Board of Trade & Cotton Exchange v. A. G. S. R. R. Co.* 360.

Contention that complainant's traffic was subjected to unjust discrimination because joint through rates in effect via competing lines not sustained. *Birge-Forbes Co. v. M. K. & T. Ry. Co.* 409 (411).

The complaining places are all in active competition with the near-by basing points and are adversely affected by the advantages which the latter enjoy in the matter of freight rates. *Town of Pelham v. A. C. L. R. R. Co.* 433 (438).

Rates from the east to Springfield are approximately 6 per cent higher than to Peoria. It was testified under these circumstances industries have been unable to locate at Springfield. Such a disadvantage in transportation charges must certainly be a serious handicap to any locality. *Springfield Commercial Asso. v. P. R. R. Co.* 511 (514).

That lower switching charges in effect at Cleveland, Ohio, than Pittsburgh, Pa., not found to constitute undue discrimination. *Waverly Oil Works v. P. R. R. Co.* 621 (623, 624).

Complainants allege that denial of free reconsignment at Milwaukee would constitute unjust discrimination in favor of Chicago. This is due to rate situation. Coal to Chicago moves on local or terminal rates and to Milwaukee on proportional rates. *Becker v. P. M. R. R. Co.* 645 (657).

Discrimination in violation of section 3 not found to result in establishment of lower rate from Mobile than in effect from New Orleans, where line from Mobile does not reach New Orleans, except by connections. *Molasses Rates from Mobile*, 666 (669).

## PREFERENCES AND PREJUDICES—Continued.

## LOCALITIES—Continued.

Fact that another complaint might possibly arise out of the general situation is not a controlling factor in determination of that question, as cases of alleged undue preference or prejudice must be adjudged upon their respective merits. *Chicago Switching Charges*, 677 (678).

There is an element of undue discrimination in the rates to many points in the interior of the State when compared with the rates to points on the two rivers. *Interior Iowa Cities Case*, 64 (74).

Class rates between Cedar Rapids and Chicago found unduly discriminatory when compared with the rate to the river towns competing with Cedar Rapids. *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 76 (79).

Present adjustment of rates unduly prefers Aurora against Elgin. *Elgin Commercial Club v. B. & M. R. R.* 380 (382).

In so far as rates to Douglas are in excess of those to Fitzgerald they unduly prefer Fitzgerald and unduly prejudice Douglas. *Mayor and Council of Douglas v. A. B. & A. R. R. Co.* 445 (453).

If rate from New York to C. F. A. points is discriminatory as compared with the rate to same points from Detroit, the adjustment may be rectified only by an increase in the Detroit rate or a cut in the rate from New York. *Gottron Bros. Co. v. G. & W. R. R. Co.* 38 (45).

Adjustment not found discriminatory against Wilmington, N. C., in favor of other ports. *Boney & Harper Milling Co. v. A. C. L. R. R. Co.* 383 (388).

Refusal to return property free exhibited at National Dairy Show Asso., in Chicago while returning free property exhibited at State fairs and expositions at Syracuse and Trenton not found unduly discriminatory. *Dairymen's Supply Co. v. P. R. R. Co.* 406 (408).

Certain rates held unduly prejudicial and others held not unduly prejudicial as between localities. *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 82.

Rates not held unduly prejudicial as between localities. *Wausau Advancement Asso. v. C. & N. W. Ry. Co.* 459; *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (487); *Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co.* 529; *Bryant Co. v. Ft. W. & D. C. Ry. Co.* 594 (597).

Rates on imported burlap from north Atlantic ports to Memphis not found unduly prejudicial as compared with rates to St. Louis and other points. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (548).

Adjustment of class rates from East St. Louis to Henderson and Owensboro, Ky., not unjustly discriminatory as against rates from Alton, Ill. *Alton Board of Trade v. C. & A. R. R. Co.* 589 (593).

## PREMIUMS IN PACKAGES.

To be able to ship premiums in packages is a privilege of value to the shipper. *Minneapolis Cereal Co. v. C. & N. W. Ry. Co.* 415 (417)

Rules in western and official classifications prescribing basis for charges upon packages containing premiums not found unreasonable. *Id.* 415.

## PREPAY STATION.

Mentioned. *Omaha-Wisconsin Grain Rates*, 602.

## PRICE.

The rate attacked is not the rate applicable to the service performed, but is simply a factor that arbitrarily enters into the price of the commodity when consumed at destination. *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (674).



**PRIMARY MARKETS.**

Omaha and Kansas City. Omaha Grain Exchange *v. C. R. I. & P. Ry. Co.* 680 (685).

**PRIVATE SCALES.**

Charge of 50 cents per car where cars are switched to private scales for weighing, unless weights so ascertained were used for the assessment of freight charges not found to be unlawful. *American Brake Shoe & Foundry Co. v. B. Ry. of C.* 350.

Private scales used for shippers other than owners of such scales and weights so ascertained used for billing purposes. *Id.* 350 (351).

**PRIVATE SIDING.**

Switching between private siding upon the switching road and the junction point with a connecting line. *Detroit Switching Charges*, 494.

**PROFIT.**

If, when viewed in the light of those considerations which enter into proper rate making, a particular rate is fair and just for the service performed, the price at which the shipper markets his product can not be accepted as the controlling factor in fixing the rate. *Oklahoma-Colorado Potato Rates*, 298 (300).

Commodity sold at points of destination on basis of cost at points of origin, plus freight charges and such profit as it may be able to make. Because lower proportional rate in effect than factor of combination through rate between same points on traffic originating in different localities, it is claimed there is a loss of profits. *Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co.* 529 (530).

Loss of profit due to additional time consumed in transportation of burlap from Calcutta to Memphis in favor of St. Louis. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (545).

No way to determine in order to award damages on basis of loss of. *Eichenberg v. S. P. Co.* 584 (588).

Carriers are entitled to a reasonable compensation for the services they render, yet this compensation might require rates upon which shippers could not do business at a profit, and the Commission could not lawfully prescribe rates unremunerative to the carrier. *R. R. Com'rs. of Fla. v. S. Exp. Co.* 634 (635).

**PROHIBITIVE RATES. See also PROFIT.**

The difference in freight rates to Elgin as compared with Aurora has operated to prevent the location of industries at Elgin, Ill. *Elgin Commercial Club v. B. & M. R. R. Co.* 380 (381).

**PROPRIETARY LINES.**

Mentioned. *Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (98).

**PROPORTIONAL RATES.**

On through traffic to a given interior point, the proportional rate from the river crossing is usually higher than local rate from the river to that point. *Interior Iowa Cities Case*, 64 (69).

Of initial lines from all eastern points to the river are applied without regard to destination of traffic beyond river, but delivering carriers west of river vary their proportional according to point at which traffic originates. *Id.* 64 (70).

That exceeds local rate between same points, or those that vary with point of origin are not unlawful in and of themselves. *Id.* 64 (73).

Excessive proportional rate may make through charges unreasonable. *Id.* 64 (73).

## PROPORTIONAL RATES—Continued.

As factor of through charges found unreasonable. *Id.* 64 (74).

A proportional rate is a part or remainder of a through rate, and as such must be taken in its relation to the whole rate. *Boney & Harper Milling Co. v. A. C. L. R. R. Co.* 383 (387).

We have said that a proportional rate, applying on through traffic might well be less than the corresponding local rate, but we have not said that such proportional rate must be, or in every case should be, less. *Id.* 383 (388).

Advance permitted in. Rates on Coal to Milwaukee and other Wisconsin points, 527 (528).

Factor of combination through rate from Memphis to Little Rock not found unduly prejudicial as compared with proportional rate on through shipments between same points on traffic originating in different localities. *Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co.* 529 (532).

Due to competition grain rates to Chicago and Milwaukee from much of the intermediate territory between Minneapolis and Chicago and Milwaukee are higher than the so-called proportional rate upon which business moves from Minneapolis. Grain Rates in C. F. A. Territory, 549 (552).

Withdrawal of proportional rates from upper Mississippi River crossings while leaving them in effect from lower crossings not justified. *Id.* 549 (554).

Carriers with lines running east from Chicago established reshipping rates instead of rates with transit privileges and lines running north and south through Illinois and converging at Chicago then established proportional rates to Chicago. *Id.* 549 (555, 556).

Reasonableness of through rate made up of proportional rate from Illinois points to Chicago and reshipping rate to Toronto, Canada, not considered. *Id.* 549 (562).

Proportional rates from East St. Louis to Texarkana and Shreveport from eastern seaboard. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (580).

On grain Minneapolis to Chicago and Omaha to Minneapolis. Omaha-Wisconsin Grain Rates, 602 (603).

Coal moves to Milwaukee on a proportional rate. *Becker v. P. M. R. R. Co.* 645 (647).

Proportional rate to Milwaukee lower than local rate not passed upon. *Id.* 645 (651).

A proportional rate is from its very nature nothing else but a part of a through rate. *Id.* 645 (651).

In establishing proportional rates carriers failed to preserve relation of rates that formerly existed. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (682).

## PROSPERITY.

Admitted that towns are prosperous, but it is contended that by virtue of their location they are entitled to compete for local trade, and that they are greatly handicapped by discriminatory rate adjustment. *Town of Pelham v. A. C. L. R. R. Co.* 433 (437).

Douglas is at a material disadvantage in the competition for the business of the region tributary to it and its neighboring rivals. It may not justly be denied relief from the handicap under which it labors, because of the circumstance that up to the present it has done well in spite of the handicap. *Mayor and Council of Douglas v. A. B. & A. R. R. Co.* 445 (450).

**PROSPERITY—Continued.**

Reduction opposed because it would mean serious reduction in the revenues, and statement offered to show that roads in the southwest are not prospering. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (575, 576).

**PUBLIC HIGHWAYS ACT.**

No duties are delegated to us under, and we can not assume to interpret or determine the purpose or scope of, the so-called public highways act or of statutes under which rights and privileges may be reserved to the United States in return for subsidies in lands or bonds or loan of credit. *U. S. v. U. P. R. R. Co.* 518 (524).

**PUBLIC INTEREST.**

It is in the public interest as well as in the interest of carriers that traffic should be handled by reasonably direct routes which can be operated at the least expense. *Haverhill Box Board Co. v. B. & A. R. R. Co.* 336 (338).

Public not affected by cancellation of provision for absorption of charges of the Chicago River & Indiana R. R. for car-float deliveries in Chicago. *Chicago Lighterage Charges*, 390 (395).

**PUBLIC WAREHOUSES.**

There are no public hay warehouses in New Orleans. *New Orleans Storage Rules and Regulations*, 605 (607).

**PURE-FOOD LAW.**

Under pure-food inspection decision No. 87, glucose may be labeled "corn syrup." *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (675).

**RAIL-AND-WATER RATES. See also OCEAN-AND-RAIL RATES.**

Through charges by sea and rail routes from Atlantic seaboard through Gulf ports to Denver, not unreasonable. *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 82 (91).

Rates from various points to Newman, Carrollton and Cedartown, compared. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (153).

Between New England points and Atlanta, Ga., considered. *Atlanta Journal Co. v. S. A. L. Ry.* 186.

**RAILROAD CENTER.**

Louisville's position on the Ohio River, and as a railroad center, operates to give it rates which Lebanon may not reasonably claim. *Lebanon Commercial Club v. L. & N. R. R. Co.* 301 (303).

**RAILROAD COMPETITION. See also COMPETITION.**

As defense to basing-point system of rate making. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (160).

Not found to justify discrimination in favor of Cordele. *Mayor and City Council of Vienna, Ga. v. G. S. & F. Ry. Co.* 173 (175).

Reductions caused by. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (537, 538).

Greater number of lines operating at Shreveport than at Texarkana offered as justification of difference in rates. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (575).

**RATE-BREAKING POINT.**

Mentioned. *Omaha-Wisconsin Grain Rates*, 602 (603).

**RATE DAMAGES. See DAMAGES.****RATE WAR.**

Mentioned. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (485); *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (537).

**RATES.**

Rates on scrap iron seem generally to be stated in cents per 100 pounds. If carrier elects to establish an equivalent rate in cents per gross ton, it may do so. Scrap Iron Rates Between Chicago and Milwaukee, 525 (526).

**RAW MATERIAL.** *See also* MANUFACTURED PRODUCTS.

Paper-stock rate which is accorded to manila paper was established to apply to all articles which enter into the manufacture of paper itself. Wrapping paper, the product of a manufacturing operation, can not properly be so classed. Paper Rates from Manitowoc and Milwaukee to Kaukauna, Wis. 305 (307).

Same rates on syrup, the manufactured product, as is charged on glucose, the raw material. National Syrup Co. v. C. & N. W. Ry. Co. 673 (674).

**REASONABLENESS OF RATES.** *See also* MEASURE OF RATES.**IN GENERAL.**

One of ways of showing unreasonableness of rates under section 1 is by proving that rates are unduly high as compared with rates to other places similarly situated. Board of Trade of Carrollton v. C. of G. Ry. Co. 154 (164).

While the fact that traffic moves freely has some bearing upon the reasonableness of the rates, it is not true that merely because traffic does not move the rates are therefore unreasonable. R. R. Com'rs. of Fla. v. S. Exp. Co. 634 (635).

**SPECIFIC INSTANCES.**

Rates held unreasonable. Mississippi River Case, 47; Interior Iowa Cities Case, 64; Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co. 76; Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co. 82; Board of Trade of Carrollton v. C. of G. Ry. Co. 154; Taylor Dry Goods Co. v. M. P. Ry. Co. 205; Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 193, 563; Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co. 237; Volco Mfg. Co. v. A. T. & S. F. Ry. Co. 289; R. R. Com'rs. of Fla. v. A. C. L. R. R. Co. 356; New England Electric Co. v. C. R. I. & P. Ry. Co. 418; Arizona Corporation Commission v. A. T. & S. F. Ry. Co. 428; Traffic Bureau of Nashville v. L. & N. R. R. Co. 533; Bryant Co. v. Ft. W. & D. C. Ry. Co. 594; National Syrup Co. v. C. & N. W. Ry. Co. 673.

Rates not held unreasonable. Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co. 82; Gottron Bros. Co. v. G. & W. R. R. Co. 38; Atlanta Journal Co. v. S. A. L. Ry. 186; Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 193; National Lumber Exporters' Asso. v. St. L. I. M. & S. Ry. Co. 215; German Kali Works, Inc., v. A. T. & S. F. Ry. Co. 223; Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co. 376; Boney & Harper Milling Co. v. A. C. L. R. R. Co. 383; Birge-Forbes Co. v. M. K. & T. Ry. Co. 409; Keats Auto Co. v. O.-W. R. R. & N. Co. 412; Minneapolis Cereal Co. v. C. & N. W. Ry. Co. 415; East Dubuque Supply Co. v. I. C. R. R. Co. 425; Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co. 484; Traffic Bureau of Nashville v. L. & N. R. R. Co. 533; Thomas Iron Co. v. P. R. R. Co. 608.

**REBATE.**

Allowances under section 15 must not be above reasonable cost of service and thereby become indirectly a rebate. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co. 93 (101).

**RECEIPT.**

Respondent shall discontinue use of present form of express receipt, and adopt that herein prescribed. In re Express Rates, 132 (138).

**RECIPROCAL ABSORPTION.**

Switching charges. *Detroit Switching Charges*, 494 (496).

**RECIPROCAL SWITCHING.** *See also SWITCHING.*

Arrangement as defense to allegation of undue preference. *Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (104).

Reciprocal switching arrangement entered into at points where industries are located upon tracks of both carriers. *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (642).

**RECLAIM.**

Use of term in connection with return of cars prior to expiration of free time. *Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (con. 116).

**RECONSIGNMENT.**

On shipment of grapes from Lodi, Cal., to New York and reconsigned at Minneapolis, Minn., joint rate should have been assessed instead of combination. *Mason Bros. v. S. P. Co.* 402.

Tariff provision that free reconsignment at junction point to connecting lines where no through rates in effect not found applicable where proportional rate in effect. *Becker v. P. M. R. R. Co.* 645 (651).

Defendants' contention that to permit reconsignment at Milwaukee would cause congestion on the interchange tracks without foundation in the record. *Id.* 645 (653).

Privilege of reconsigning coal at Ludington instead of Milwaukee found to be to the disadvantage of complainant. *Id.* 645 (652, 653).

Is a service naturally and normally to be afforded not by the outbound but by the inbound carrier. *Id.* 645 (654).

Question of detention is one that must be worked out by itself, and it is not reasonable that the advantages of reconsignment should be thrown away in order to avoid abuses that can be remedied in other ways. *Id.* 645 (655).

Under act a service which carrier may be properly expected to furnish. *Id.* 645 (655).

Additional back haul and reconsigning charges would accrue over routes offered for comparison and are not acceptable tests. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (686).

**RED RIVER.**

An appropriation of \$200,000 is available for its improvement. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (573).

**REDUCED RATES.**

In so far as the laws administered by this Commission are concerned, the right of carriers to transport government property free or at reduced rates is elective and not mandatory. *U. S. v. U. P. R. R. Co.* 518 (524).

**REDUCTION IN RATE.**

Award of reparation does not necessarily follow. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (172).

Carriers forced to reduce rates, or lose traffic. *Montezuma v. C. of G. Ry. Co.* 280 (282).

The fact that other rates may be reduced if the increases are not permitted to become effective affords no predicate that the present rates are unreasonably low. *Brick Rates from Ohio Points to Huntington, W. Va.* 292 (297).

Reduction opposed because it would mean serious reduction in the revenues, and statement offered to show that roads in the southwest are not prospering. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (575, 576).

**REDUCTION IN RATE—Continued.**

Proposed rates opposed because it would compel reduction via lines of protestant carriers, and that they would thereby suffer heavy losses in revenues. Molasses Rates from Mobile, 666 (667, 669).

Reduction by carriers in rates on imported blackstrap molasses in order to induce movement of new traffic at little additional expense. 666 (671).

**REFRIGERATION.**

Proposed increase of \$5 per car on fruits and vegetables between Colorado and Utah, not justified. Refrigeration of Fruits and Vegetables, 326.

**REFUND.**

Carriers refunded difference between joint through rates in effect via competing lines, but upon discovering no tariff authority existed for rates upon basis of which the refund had been made, the refund was returned. Birge-Forbes Co. v. M. K. & T. Ry. Co. 409 (410).

**REFUSAL TO CARRY.**

Where shipper refused to state, as required by tariff, the market value of shipment of stocks and bonds, the carrier was under no obligation to transport such securities and it was its duty to refuse the shipment. Acme Portland Cement Co. v. Am. Exp. Co. 316.

**REFUSED SHIPMENT.**

Request for notification to shippers of failure or refusal of consignees to accept or remove shipments of explosives should be placed on different colored label than that prescribed by Commission's regulation. Storage Charges in C. F. A. Territory, 372 (375).

**REHEARING. See also SUPPLEMENTAL REPORT.**

Petition for, based upon an alleged error of fact, denied. Taylor Dry Goods Co. v. M. F. Ry Co. 308.

**RELATIVE ADJUSTMENT. See also ADJUSTMENT OF RATES; RELATIVE RATES.**

The carriers have recognized the similarity of the rail locations of Columbia and Augusta to the ports by equalizing the class rates from Baltimore and the east. The same recognition should be given to rates on specific commodities. Columbia Chamber of Commerce v. S. Ry. Co. 339 (345, 348).

Commission prescribed mileage rates on citrus fruits from points in Florida to Jacksonville when for beyond, but carriers failed to correspondingly reduce rates from upper Caloosahatchee River landings. R. R. Com'rs. of Fla. v. A. C. L. R. R. Co. 356 (357).

Peoria, Ill., takes 110 per cent of the New York-Chicago rate on traffic to and from the east. Springfield is in 117 per cent territory. If Peoria enjoys a rate of 110 per cent the rate to Springfield should not exceed 113 per cent. Springfield Commercial Asso. v. P. R. R. Co. 511 (514).

While we do not think a relationship in the matter of coal rates between Louisville, Memphis and Nashville should be established, we do think a comparison of their rates properly may be drawn. Measured, then, by the rate to Memphis and to Louisville the rate to Nashville is high. Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (539).

Contention that increase on malt ought not to be made because malt competes with certain other articles usually manufactured from corn and without corresponding increase on these articles is to put the maltster at Chicago at a disadvantage, not sustained. Grain Rates in C. F. A. Territory, 549 (551).

**RELATIVE ADJUSTMENT—Continued.**

Direct lines to Shreveport have depressed their rates to meet combinations through lower Mississippi River crossings. They can not be required to raise their rates in order to place Texarkana upon the same basis as Shreveport. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (581).

Carriers changed rating on cured meats in order to realign traffic. Rates on Packing-House Products, 599 (600).

Rates advanced for the purpose of realigning rates in effect over other roads. *Omaha-Wisconsin Grain Rates*, 602.

Fact that another complaint might possibly arise out of the same general situation is not a controlling factor in the determination of that question, as cases of alleged undue preference or prejudice must be adjudged upon their respective merits. *Chicago Switching Charges*, 677 (678).

**RELATIVE RATES.** *See also* ADJUSTMENT OF RATES; COMPARATIVE RATES; PREFERENCE AND PREJUDICES; RELATIVE ADJUSTMENT.

Average earnings per ton per mile on salt from different localities to Chicago as measure of rates. *Gotttron Bros. Co. v. G. & W. R. R. Co.* 38 (43).

Rates from conflicting producing fields have been adjusted both with relation to percentage scale from east and as between Detroit on one hand and Retsof and Cuylerville on the other. *Id.* 38 (45).

Time has an undoubted weight and may often be controlling in a relation of rates under which different communities have competed with one another for some years. *Mississippi River Case*, 47 (54).

Present relation of rates as between upper and lower crossings no longer fits conditions surrounding the traffic. *Id.* 47 (54).

Upper Mississippi River towns take higher rates from the east than the lower crossings. *Interior Iowa Cities Case*, 64 (66).

Class rates between Iowa interior points and Chicago are unreasonable and unduly discriminatory in comparison with rates to river towns on either side of the state. *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 76.

Rates on many commodities when moving to Colorado common points are unduly discriminatory in comparison with rates applied on same commodities when moving to Salt Lake City. *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 82 (90).

Rates to Colorado compare favorably with rates to Texas common points, and class rates from Chicago and the Mississippi River to Colorado common points not found unreasonable. *Id.* 82 (89).

One of the ways of showing unreasonableness under section 1 is by proving that rates are unduly high as compared with rates to other places similarly situated. *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (164).

Rates to point upon edge of territorial group not fairly comparable with other rates. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 193 (195).

There can be no possible question but that the interior Iowa town rests under a disadvantage in matter of freight rates as compared with Chicago, St. Louis and Kansas City. *Id.* 193 (196).

Establishing carload rating would throw out of balance the relation of rates on cotton piece goods in all parts of the country. *Taylor Dry Goods Co. v. M. P. Ry. Co.* 205 (210).

## RELATIVE RATES—Continued.

Commission recognizes right of western carriers to maintain higher classification and higher rates than prevail in the east. *German Kali Works, Inc., v. A. T. & S. F. Ry. Co.* 223 (224).

Montezuma, Ga., found entitled to same rates as Americus and Cordele, Ga. *Montezuma v. C. of G. Ry. Co.* 280 (284).

Higher rates in effect from Meridian to various points between York and Calvert than from Mobile justified by water competition. *Meridian Board of Trade & Cotton Exchange v. A. G. S. R. R. Co.* 360 (361).

Relative unreasonableness is not proven here by comparisons of distances. *Boney & Harper Milling Co. v. A. C. L. R. R. Co.* 383 (388).

Rates on lumber from Wausau to all central freight association points of destination compared with the rates from Menominee, Mich., and Minneapolis, Minn. *Wausau Advancement Asso. v. C. & N. W. Ry. Co.* 459 (460).

Rates on scrap iron from Duluth, St. Paul, and Minneapolis increased to relieve Sioux Falls from a situation apparently unfair. *Scrap Iron Rates Between Duluth and Chicago*, 467 (468).

Discrepancy between the rates on cement from Mason City and Chicago does not prove that Mason City rate, which otherwise seems reasonable, is unduly low. *Iowa-Minnesota Cement Rates*, 477 (482).

In official classification territory culverts take fifth-class rating, minimum 24,000 pounds (subject to rule 27). In western classification territory the rating is fourth-class minimum 20,000 pounds (subject to rule 6-B). *Klauer Mfg. Co. v. A. T. & S. F. Ry. Co.* 508 (509).

Rates from St. Paul to Chicago compared with rates between Chicago and Milwaukee. *Scrap Iron Rates Between Chicago, Ill and Milwaukee, Wis.* 525 (526).

The rate charged or gross earnings derived on any basis for the transportation of a given commodity between two points furnishes a guide in arriving at the rate to be charged upon the same or nearly the same commodity between two other points similarly circumstanced. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (535).

While it may be that the movement of coal to Memphis is somewhat heavier than to Nashville, there is nothing of record that indicates any substantial dissimilarity of operating conditions. *Id.* 533 (536).

Competition of east and west lines have no effect in maintaining lower class rates to Shreveport than to Texarkana. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (578).

As a general rule commodity rates to Texas points are a smaller percentage below the corresponding class rates than those to Texarkana and Shreveport. *Id.* 569 (581).

Class rates compared from St. Louis and Memphis to Shreveport and Texarkana with rates to certain points in Oklahoma. *Id.* 569 (579, 581).

Class rates to Texarkana, Ark.-Tex., from St. Louis, Kansas and Memphis should not exceed those maintained to Shreveport. *Id.* 569 (571, 580).

The inbound rates to Shreveport and Texarkana should be adjusted independent of the outbound rates and in such manner as to avoid unjust discrimination. *Id.* 569 (576).

Rates to Texarkana upon commodities which to Shreveport take rates made on the lower Mississippi River crossings should not exceed those to the latter city by more than six cents. *Id.* 569 (582).

Commodity rates via direct lines to Texarkana should not exceed those maintained to Shreveport. *Id.* 569 (582).



**RELATIVE RATES—Continued.**

Alton not found entitled to same rates as East St. Louis to Henderson and Ownesboro, Ky. *Alton Board of Trade v. C. & A. R. R. Co.* 589 (592).

Rates on bananas from New Orleans to Amarillo compared with rates on bananas between numerous other points. *Bryant Co. v. Ft. W. & D. C. Ry. Co.* 594 (596).

Rates from point on border to Canadian points are distinctly higher than corresponding rates upon the American side. Rates on Soda Ash and other commodities, 613 (615).

Averred that rates on vegetables destined to Atlanta are unlawful because in excess of those charged to Cincinnati, a more distant point. *R. R. Comrs. of Fla. v. S. S. Exp. Co.* 634.

Comparisons made on like traffic between other points. *Fairmont Creamery Co. v. A. T. & S. F. Ry. Co.* 661 (662).

Rates prescribed for the future which do not bear the same relationship one to another as the present rates, but this is due to the fact that the present rates bear no relation one to another. *Id.* 661 (663).

Rates and distances from Mobile to St. Louis compared with rates and distances, New Orleans to St. Louis and Memphis. *Molasses Rates from Mobile*, 666 (670).

Local rate fabric from interior Kansas points to Oklahoma points indicate that the local rates from Omaha and Kansas are reasonably aligned. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (684).

Comparison of rates from Wichita to Texas and Omaha and Kansas City to Oklahoma are pertinent because rates prescribed by the Commission from Kansas to Texas apply through Oklahoma over the same roads. *Id.* 680 (684).

**RELOAD CHARGE.**

Difference between the overhead or through rate and the combination on a jobbing point is referred to as a "reload" charge. *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 82 (87).

**RENTAL.**

Land for purpose of building tank leased by railroad at rental said to be equal to six per cent of the value of land so leased. *Molasses Rates from Mobile*, 666 (668).

Discriminatory practice of leasing elevators at unduly low rental or operating same through subsidiary corporations discontinued. *Omaha Grain Exchange v. A. T. & S. F. Ry. Co.* 664.

**REPORTS AND ORDERS. See also SUPPLEMENTAL REPORT.**

Former report modified by increasing rate. *Iowa State Board of R. R. Comrs. v. A. E. R. R. Co.* 563 (567).

**RESHIPPING RATE. See also RECONSIGNMENT.**

Reshipping rates from Chicago to points in central freight association territory differ with the points of origin. *Grain Rates in C. F. A. Territory*, 549 (551).

Increase by withdrawing benefit of reshipping rate on by-products and confining it to the local tariff. *Id.* 549 (553).

Carriers with lines running east from Chicago established reshipping rates instead of rates with transit privileges, and lines running north and south through Illinois and converging at Chicago then established proportional rates to Chicago. *Id.* 549 (556).

Reasonableness of through rate made up of proportional rate from Illinois points to Chicago and reshipping rates to Toronto, Canada, not considered. *Id.* 549 (562).

**RESHIPPING RATE—Continued.**

Complaint brought to have adjustment restored which had been withdrawn, and which complainant had enjoyed for several years. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (681).

**RESTORED RATE.**

Rate found unreasonable and damages awarded on basis of rate in effect prior and subsequent to movement. *Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co.* 701 (702).

**RETURNED SHIPMENT.**

Property exhibited at State fairs and expositions. *Dairymen's Supply Co. v. P. R. R. Co.* 406.

Minimum charge rule applicable to returned empty beer packages not found unreasonable. *Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co.* 688.

**REVENUE. See also Car Earnings; Ton Per Mile.**

Loss of, as defense against placing upper and lower crossings on a parity of rates. *Mississippi River Case*, 47 (57).

Gross of nine express companies, for year ending June 30, 1912, was \$151,706,386.79. *In re Express Rates*, 132 (144).

Average, per piece of express matter. *Id.* 132 (146).

Under percentage contracts, expenses can be made to increase faster than revenue whenever contracting parties so desire. *Id.* 132 (150).

Per car as justification for advance. *Rates on Tin Cans and Other Commodities Between California and Points in Other States*, 247 (249).

Increase in rates in order to retire from traffic to competitive points rather than to sacrifice much-needed additional revenue on traffic to its intermediate local stations. *Kansas-Iowa Brick Rates*, 285 (286).

This line, although separately operated, is by stock ownership a Rock Island property and can not be ignored, since it affords opportunity for shorter hauls and reduced operating expenses with correspondingly increased revenue per ton mile. *Id.* 285 (287).

A comparatively small injury to an average automobile will generally result in damages equal to or in excess of the revenue received for its transportation. *Keats Auto Co. v. O.-W. R. R. & N. Co.* 412 (413).

Under prevailing local rates and the expenses incident to short-haul business brings in but small revenue. *Mayor and Council of Douglas v. A. B. & A. R. R. Co.* 445 (453).

Advance in rates because carriers claim they require additional revenue. *Grain Rates in C. F. A. Territory*, 549 (558).

Proposed rates opposed because it would compel reduction via lines of protestant carriers, and that they would thereby suffer heavy losses in revenues. *Molasses Rates from Mobile*, 666 (667, 669).

**REWEIGHING. See also WEIGHT.**

Tariffs should provide that where reweighing is requested by shipper, and shows error beyond limit of tolerance fixed, no charge shall be made for reweighing. *In re Weighing of Freight by Carriers*, 7 (31).

Following rules should be adopted: Reweigh every car within one year from date when it is put into service; reweigh after it undergoes substantial repairs; reweigh at least once in two years. *Id.* 7 (35).

Right of shipper to demand. *American Brake Shoe & Foundry Co. v. B. Ry. of C.* 350 (353).

**RISK.**

Slight risk of loss or damage to salt, and entitled to low rates. *Gotttron Bros. Co. v. G. & W. R. R. Co.* 38 (43).

**RISK—Continued.**

There are perhaps but few articles of freight more subject to injury and unsatisfactory to handle than automobiles uncrated. *Keats Auto Co. v. O.-W. R. R. & N. Co.* 412 (413).

Carload shipments are sealed and transported intact to destination, and this method results in the minimum risk of pilferage or damage as compared with the risk to which less-than-carload shipments are exposed. *Id.* 412 (413).

Generally agreed that nesting of culverts was frequently injurious, and that nested culverts of the larger sizes are much more difficult to handle than the individual culverts, loading and unloading being done by hand. *Klauer Mfg. Co. v. A. T. & S. F. Ry. Co.* 508 (509).

There is a difference between full and empty beer packages in liability to damage and in the kind of protection necessary en route. *Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co.* 688 (691).

**ROUTING. See also MISROUTING.**

Direct Routing Committee shall study existing express routes and consider complaints of indirect or circuitous routing. In re *Express Rates*, 132 (136).

Restriction to certain routes of the application of export rate from Texas to New Orleans not found unreasonable. *Rates on Cottonseed and its Products*, 219.

Traffic from Sheridan to points on the C. & N. W. Ry. east of Norfolk should be routed through the junction point with the C. B. & Q. nearest the point of destination. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (259).

It is in the public interest as well as in the interest of the carriers that traffic should be handled by reasonably direct routes which can be operated at the least expense. *Haverhill Box Board Co. v. B. & A. R. R. Co.* 336 (338).

If the shipper had tendered its traffic unrouted, it would have been the duty of the initial carrier to forward it via the cheapest available route. *American Agricultural Chemical Co. v. B. & A. R. R. Co.* 398 (400).

Cancellation of joint rates would have necessitated changing of routing because no satisfactory agreement could be reached as to divisions. *Lumber Rates Texas etc., to Oklahoma and Missouri*, 471 (476).

Under the act the shipper is given the right to designate the movement of his shipment. *Becker v. P. M. R. R. Co.* 645 (654).

Rates over routes offered for comparison are not over customary practicable routes, and the hypothetical figures resulting are not acceptable tests. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (686).

Instructions contained only rate. *Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co.* 703 (704).

**RULES AND REGULATIONS.**

Respondents shall adopt and jointly publish the rules and regulations proposed in former report and order. In re *Express Rates*, 132 (137).

Carrier may provide rule that bill of lading will not be executed which contains a provision for notifying a person at a point other than the destination of shipment. *Ludowici-Celadon Co. v. A. C. L. R. R. Co.* 693 (696).

**ST. LOUIS INDUSTRIAL DISTRICT.**

Limits of. *Alton Board of Trade v. C. & A. R. R. Co.* 589 (590).

**SCALED RATES.**

Mentioned. *Gottron Bros. Co. v. G. & W. R. R. Co.* 38 (39).

**SCALES.**

Should be tested by test car at least once in two months; in many cases every month. In re *Weighing of Freight by Carriers*, 7 (13).

Charge of 50 cents per car where cars are switched to private scales for weighing unless weights so ascertained were used for the assessment of freight charges not found to be unlawful. *American Brake Shoe & Foundry Co. v. B. Ry. of C.* 350.

**SEA AND RAIL RATES.** *See OCEAN AND RAIL RATES.***SECTION 1.** *See also REASONABLENESS OF RATES; SWITCH CONNECTION.*

*Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (164); *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (183); *Atlanta Journal Co. v. S. A. L. Ry.* 186 (191); *German Kali Works, Inc., v. A. T. & S. F. Ry. Co.* 223 (224); *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (487); *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (504).

**SECTION 2.** *See also DISCRIMINATION.*

*German Kali Works, Inc., v. A. T. & S. F. Ry. Co.* 223 (224); *Dairymen's Supply Co. v. P. R. R. Co.* 406 (408); *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (487).

**SECTION 3.** *See also PREFERENCES AND PREJUDICES.*

*Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (101); *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (164); *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (185); *Atlanta Journal Co. v. S. A. L. Ry.* 186; *German Kali Works, Inc., v. A. T. & S. F. Ry. Co.* 223 (224); *Dairymen's Supply Co. v. P. R. R. Co.* 406 (408); *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (487); *U. S. v. U. P. R. R. Co.* 518 (519); *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (541); *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (547, 548); *Alton Board of Trade v. C. & A. R. R. Co.* 589 (590); *Waverly Oil Works v. P. R. R. Co.* 621; *Molasses Rates from Mobile*, 666 (669, 672); *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (681).

**SECTION 4.** *See also LONG AND SHORT HAUL; THROUGH AND LOCAL RATES.*

*Interior Iowa Cities Case*, 64 (74); *Board of Trade of Carrollton v. C. of G. Ry. Co.* 154 (164); *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (185); In re *Coal Rates from Anthracite Regions to Points on New Haven Railroad*, 235; *Montezuma v. C. of G. Ry. Co.* 230; *Kansas-Iowa Brick Rates*, 285 (286); *Iowa Grain Rates*, 354 (355); *Mayor and Council of Douglas v. A. B. & A. R. R. Co.* 445 (448, 452); *Wausau Advancement Asso. v. C. & N. W. Ry. Co.* 459 (460); *Lumber Rates Texas etc., to Oklahoma and Missouri*, 471 (473); *Iowa-Minnesota Cement Rates*, 477 (482); *Iowa State Board of R. R. Com'rs v. A. E. R. R. Co.* 563 (568); *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (570); *Alton Board of Trade v. C. & A. R. R. Co.* 589 (590, 593); *Thomas Iron Co. v. P. R. R. Co.* 608.

Final disposition on application should await construction of the fourth section to be made by the Supreme Court in cases now under submission. *Lebanon Commercial Club v. L. & N. R. R. Co.* 301 (303).

**SECTION 15.** *See also ALLOWANCES; CLASSIFICATION; JOINT THROUGH RATE; THROUGH ROUTE.*

*Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (101); *Rates on Cottonseed and Its Products*, 219 (221); *U. S. v. U. P. R. R. Co.* 518 (519, 523, 524); *Iowa State Board of R. R. Com'rs v. A. E. R. R. Co.* 563 (567).

SECTION 16. *See* LIMITATION OF ACTION.SECTION 22. *See also* EXCURSION FARES; MILEAGE BOOKS; FREE TRANSPORTATION.

Carnegie Board of Trade v. P. Co. 122 (129); In re Mileage Books, 318 (323, 324); Dairymen's Supply Co. v. P. R. R. Co. 406 (406).

## SHEDS.

No greater free time allowed to remove traffic from freight shed furnished by carrier than for unloading from car. New Orleans Storage Rules and Regulations, 605 (606).

## SHIPPING ORDER.

Where bills of lading and shipping orders are prepared by the shipper and the shipper notes upon the bill of lading certain instructions which it fails to note on the shipping order, the carrier can not be held liable for misrouting if it complies with the instructions shown on the shipping order. American Agricultural Chemical Co. v. B. & A. R. R. Co. 398 (401).

## SHORT-HAUL BUSINESS.

Under prevailing local rates and the expenses incident to short-haul business brings in but small revenue. Mayor and Council of Douglas v. A. B. & A. R. R. Co. 445 (453).

## SHORT LINE.

Rather than meet rates of short line, carriers desired to abandon business unless leave could be obtained to disregard fourth section. Iowa Grain Rates, 354 (355).

Short-distance haul over two or more lines meeting rates of one line by longer route. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co. 563 (567).

Rock Island hauls from Omaha are longer than via M. K. & T., St. L. & S. F. and K. C. S. lines, hence the Rock Island is not the rate-making line. Omaha Grain Exchange v. O. R. I. & P. Ry. Co. 680 (684).

## SHRINKAGE RATES.

Nothing has been produced to convince us that the long-established equalization adjustment, which, in some respects at least, is well adapted to the prevailing conditions, should be disturbed because Wilmington has no shrinkage rate from the upper crossings. Boney & Harper Milling Co. v. A. C. L. R. R. Co. 383 (388).

## SOUTHEASTERN TERRITORY.

Described. Columbia Chamber of Commerce v. S. Ry. Co. 339 (344).

## SOUTHERN WEIGHING AND INSPECTION BUREAU.

Private scales tested by. American Brake Shoe & Foundry Co. v. B. Ry. of C. 350 (351).

## SPECIAL EXPRESS TRAINS.

When ripening season in Florida comes on material impairment of the passenger schedule is avoided by putting on special express trains. R. R. Com'rs of Fla. v. Exp. Co. 634 (636).

## SPECIFICS.

Mentioned. Atlanta Journal Co. v. S. A. L. Ry. 186 (188).

## SPOT MARKETS.

Defined. Memphis Freight Bureau v. B. & O. R. R. Co. 543 (544).

## SPOTTING CARS.

Cars must be spotted in order to be properly weighed. American Brake Shoe & Foundry Co. v. B. Ry. of C. 350 (351).

SPREAD OF RATES. *See* ADJUSTMENT OF RATES.

**STATE FAIRS.**

Returning free of charge property exhibited at. Dairymen's Supply Co. v. P. R. R. Co. 406.

**STATE RATES.**

While the rate applies between points both of which are in the state of Minnesota, it was filed by the carriers with this Commission, and it appears to be used in making interstate rates. Iowa-Minnesota Cement Rates, 477 (482).

Whether carriers can decline to publish two state rates for interstate movement and maintain the higher through interstate charge is a point upon which no opinion is expressed. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co. 563 (568).

Texas intrastate rate on wagon wood higher than on lumber. Interstate rate made same by carriers in order to place all producers on a parity. Sligo Iron Store Co. v. St. L. & S. F. R. R. Co. 616 (617).

**STATE REGULATION.**

Legislature of South Carolina and Railroad Commission of Georgia enacted that coupons from mileage books shall be received on trains for transportation. In re Mileage Books, 318 (319, 320).

**STATUTE OF LIMITATIONS. See LIMITATION OF ACTION.****STENCILLED WEIGHT.**

On cars often inaccurate. In re Weighing of Freight by Carriers, 7 (19).

**STIPULATION.**

Damages awarded on basis of stipulated facts as to benefits accruing to complainant's competitor under preferential contract for wharfage facilities. Eichenberg v. S. P. Co. 584 (588).

**STOCK OWNERSHIP.**

A majority of the stock of the Manufacturers Railway is owned by the holders of a majority of the stock of the brewing association. Mfra. Ry. Co. v. St. L. I. M. & S. Ry. Co. 93 (94).

This line, although separately operated, is by stock ownership a Rock Island property and can not be ignored since it affords opportunity for shorter hauls and reduced operating expenses with correspondingly increased revenue per ton-mile. Kansas-Iowa Brick Rates, 285 (287).

The stock of the O. S. L. is owned by the U. P. R. R. Co. U. S. v. U. P. R. R. Co. 518 (523).

Pennsylvania lines west of Pittsburgh are controlled or operated by the Pennsylvania Co., the entire stock of which is owned by the Pennsylvania Railroad. Waverly Oil Works v. P. R. R. Co. 621 (624).

**STOCKS AND BONDS.**

Where shipper refused to state, as required by tariff, the market value of shipment of stocks and bonds, carrier was under no obligation to transport such securities and it was its duty to refuse the shipment. Acme Portland Cement Co. v. Am. Exp. Co. 316.

**STORAGE.**

Free storage of logs, bolts, piling, and other forest products in the rough on right of way awaiting shipment, at owner's risk. Storage charges in C. F. A. Territory, 372 (375).

Reduction in free storage time at freight sheds at New Orleans, La., except on hay, justified. New Orleans Storage Rules and Regulations, 605 (606).

Tariff should be revised so that reduced rate will be applicable to blackstrap molasses whether unloaded into storage tanks or transferred direct from vessel to tank cars. Molasses Rates from Mobile, 666 (672).

**STORAGE—Continued.**

Arrangement made for double-sacking and storing export rice at port.  
Port Arthur Rice Milling Co. v. T. & F. S. Ry. Co. 697 (700).

**STORAGE CHARGES.**

Charges found unreasonable on more dangerous explosives in that they provide for doubling of charges after 24 hours following expiration of free time and on less dangerous in that they reduce the free time and doubling of charges. Storage Charges in C. F. A. Territory, 372 (374).

Advance in storage charges on traffic held in freight shed after expiration of free time justified. New Orleans Storage Rules and Regulations, 605 (607).

**STORE DOOR DELIVERY.**

Provided for so that traffic would be drayed free of charge to consignees on line of connecting or own line. Kansas City & M. Ry. Co. Rate Cancellation, 640 (642).

**SUBSIDIARY CORPORATIONS.**

Discriminatory practice of leasing elevators at unduly low rental or operating same through subsidiary corporations, discontinued. Omaha Grain Exchange v. A. T. & S. F. Ry. Co. 664.

**SUBSIDIES.**

No duties are delegated to us under, and we can not assume to interpret or determine the purpose or scope of, the so-called public highways act or of statutes under which rights and privileges may be reserved to the United States in return for subsidies in lands or bonds or loan of credit. U. S. v. U. P. R. R. Co. 518 (524).

**SUNDAYS.**

In computing free time Sundays and legal holidays should be excluded, but after expiration of free time Sundays and legal holidays may be properly included. New Orleans Storage Rules and Regulations, 605 (607).

**SUPPLEMENTAL REPORT. See also REHEARING.**

Mrs. Ry. Co. v. St. L. I. M. & S. Ry. Co. 93; Rates on Tin Cans and Other Commodities Between California and Points in Other States, 247; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250; Rates on Coal to Milwaukee and Other Wisconsin Points, 527; Iowa State Board of R. R. Com'rs v. A. E. R. R. Co. 563; Elchenberg v. S. P. Co. 584.

**SWITCH CONNECTION.**

A lateral branch line of railroad is entitled to a switch connection without regard to its status as plant facility or common carrier. Huerfano Coal Co. v. C. & S. E. R. R. Co. 502 (505).

**SWITCHING.**

From private siding upon switching road to junction point with a connecting line. Detroit Switching Charges, 494.

From a junction point with one line to a junction with a second line. Id. 494.

Between team track of the switching road and the junction point with the connecting line. Id. 494 (495).

Practice of interchange switching found to be discriminatory under section three. Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (540).

**SWITCHING CHARGES.**

Charge of 50 cents per car where cars are switched to private scales for weighing unless weights so ascertained were used for the assessment of freight charges not found to be unlawful. American Brake Shoe & Foundry Co. v. B. Ry. of C. 350.

**TERMINALS—Continued.**

That Pennsylvania declines to open its terminals to other systems entering Pittsburgh while arrangement with its own family lines is made, not found to constitute undue discrimination. *Waverly Oil Works v. P. R. R. Co.* 621 (624, 625).

There perhaps ought to be, and perhaps at some time will be, a general rule applicable to all terminals which can be applied with uniformity. Id. 621 (626).

Commission does not think under the circumstances it ought to establish a mere switching charge which the competitors of the Pa. lines can absorb and under which they obtain virtual use of these terminals. Id. 621 (627).

In our opinion public may require Pa. to handle cars to and from industries upon its terminal tracks in the city of Pittsburgh, and we are further of the opinion that the present power of the Commission is adequate to that end. Id. 621 (628).

Facilities of P. M. at Milwaukee. *Becker v. P. M. R. R. Co.* 645 (647).

A carrier may as a matter of convenience when its terminal tracks are congested hold cars at some point short of destination, provided such a course involves no disadvantage to the consignee. Id. 645 (652).

**TERMINAL SERVICES.**

Four are involved in two intermediate rates, while but two are necessary in a through rate. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 193 (202); *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (231).

Protestants allege that a continuous haul can not ordinarily be as expensive as combined local hauls with their additional terminal services. *Kansas-Iowa Brick Rates*, 285 (286).

**TEST CAR.**

Testing track scales by use of. In re *Weighing of Freight by Carriers*, 7 (12).

**TEXAS COMMON POINTS.**

Texas common-point territory covers the greater part of the most populous section of the State and is approximately 450 miles square. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (576).

**THROUGH AND LOCAL RATES.**

Through charges exceed sum of intermediate rates, and in violation of section four. *Interior Iowa Cities Case*, 64 (74).

Rate for a long through haul ordinarily should be less than the combination of two or more intermediate rates between same points over same route. *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 82 (83).

Through rate ought not to equal sum of intermediates. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 193 (202).

Carrier might accept less for through service than reasonable local rate. *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (234).

Allegation that through rates charged on potatoes were higher than the combination of intermediate rates, not sustained. *Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.* 274 (279).

If carriers publish for interstate use State rates which are lower than through charge section four must be observed, unless permission to the contrary is granted upon application to this Commission. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 563 (568).



**THROUGH AND LOCAL RATES—Continued.**

Aggregate of intermediate rates not found to exceed joint through rate.

*Bryant Co. v. Ft. W. & D. C. Ry. Co.* 594 (597).

Factor of intermediate rates, not on file with Commission, and used in absence of through rate found unreasonable. *Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co.* 701 (702).

Carrier filed and posted tariff naming through rate to points on line which was not named as a party and had not concurred. Charges collected on basis of combination of intermediates. Damages awarded. *Morton Salt Co. v. M. L. & T. R. R. & S. S. Co.* 422 (424).

**THROUGH RATES.**

Carrier not justified in increasing factor where through rate exceeds sum of intermediates. *California-Nevada Lumber Rates*, 313 (315).

Fact that through rates on water-borne traffic to Duluth and to rate breaking points in the northwest, may be low is not sufficient reason for depriving those points of benefits of those great channels by imposing higher rates upon outbound shipments to intermountain and south Pacific coast terminals. *Transcontinental Rates from Group F*, 1 (4).

Are based on sum of intermediates, but earnings on traffic are not divided east and west of river on any such basis, proportional rate from river crossing to interior point being usually higher than local rate from river to that point. *Interior Iowa Cities Case*, 64 (69).

For through service are sometimes unreasonable because one of proportionals entering into through charges is excessive. *Id.* 64 (73).

Shipper has no legal grievance with respect to through traffic unless compelled to pay excessive charges for through services. *Id.* 64 (73).

Found unreasonable because proportional rate as factor of through rate is excessive. *Id.* 64 (74).

Payments made out of, by trunk lines were absorptions, and not divisions of joint rates for services rendered shippers. *Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co.* 93 (105).

To noncompetitive points made by combination rates to competitive points and local class rates beyond. *Lagrange Chamber of Commerce v. A. & W. P. R. R. Co.* 178 (180).

An attempt to avoid through rates by paying ticket rate to an intermediate point and the mileage rate beyond must be accompanied with the conditions of the tariffs under which mileage is sold. *In re Mileage Books*, 318 (322).

Petition to establish between two points in same state a through route and joint rate via a circuitous interstate route, dismissed. *Haverhill Box Board Co. v. B. & A. R. R. Co.* 336.

Generally speaking, rates from all the river crossings to Columbia and Augusta are constructed with reference to through transportation from more distant points of origin. Differentials to the various crossings are the results of efforts by the carriers to equalize the through rates from any particular point of origin via any reasonably direct or practicable gateway on either river. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (342).

Disagreement over division of through rate no justification for canceling through rates. *Oklahoma Grain Rates*, 462.

Factor of combination through rate from Memphis to Little Rock not found unduly prejudicial as compared with proportional rate on through shipments between same points on traffic originating in different localities. *Scott-Mayer Commission Co. v. C. R. I. & P. Ry. Co.* 529 (532).

**THROUGH RATES—Continued.**

Reasonableness of through rate made up of proportional rate from Illinois points to Chicago and reshipping rate to Toronto, Canada, not considered. Grain Rates in C. F. A. Territory, 549 (562).

Rates on grain from Illinois to the southeast, south and southwest are usually made by naming a rate to the Ohio River or to St. Louis, which in combination with the rate beyond makes up the through transportation charges to destination. *Id.* 549 (556).

**THROUGH ROUTES.**

In any case where reasonably expeditious through routes do not result from conferences of Direct Routing Committee, Commission has authority to prescribe new and reasonably direct through routes. *In re Express Rates*, 132 (137).

Carrier permitted to discontinue through route voluntarily maintained for four years which embraced substantially less than the entire length of its railroad. Rates on Cottonseed and its Products, 219 (221).

Should be established from Sheridan to points on the C. & N. W. Ry. east of Norfolk via the junction point on the C. B. & Q. nearest the point of destination. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (259).

Petition to establish between two points in same State a through route and joint rate via a circuitous interstate route, dismissed. *Haverhill Box Board Co. v. B. & A. R. R. Co.* 336.

Each carrier subject to act is charged with the duty of furnishing cars to industries located upon its line. In case of through routes the obligation to furnish cars for shipments to points upon lines of its connections is joint with such connections. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (506).

Distance is an important element in determining whether routings are or would be satisfactory, and in these proceedings this element weighs against the establishment of the proposed routes. *U. S. v. U. P. R. R. Co.* 518 (522).

Through route denied because carrier would have to participate in traffic embracing substantially less than the entire length of its line. *Id.* 518 (523).

Requested via point involving less distance. *Arizona Corporation Commission v. A. T. & S. F. Ry. Co.* 428 (432).

Joint rates of Frisco to K. C. & M. stations may be higher than to Rogers, its point of interchange. Through routes and joint rates should be continued to local points on a reasonable basis above rate to Rogers. *Kansas City & M. Ry. Co. Rate Cancellation*, 640 (644).

History of legislative enactments. *Waverly Oil Works v. P. R. R. Co.* 621 (629, 630).

**TICKETS. See also EXCURSION FARES; MILEAGE BOOKS.**

Regulation requiring exchange of coupons from interchangeable mileage books for mileage exchange tickets before commencing journey not found discriminatory or otherwise in violation of act. *In re Mileage Books*, 318.

**TOLERANCE.**

Limit of error within which the ascertained track scale weight of a carload of freight shall be deemed to be correct. *In re Weighing of Freight by Carriers*, 7 (29).

Five hundred pounds may be regarded as reasonable. *Id.* 7 (30).

**TON PER MILE EARNINGS.**

Average earnings per ton per mile on salt from different localities to Chicago as measure of rates. *Gottron Bros. Co. v. G. & W. R. R. Co.* 38 (43).

On different classes from New York to upper crossings. *Mississippi River Case*, 47 (60).

Comparison of per ton-mile earnings as measure of rate. *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 76 (78).

As measure of rates. *Atlanta Journal Co. v. S. A. L. Ry.* 186 (191).

Coffee. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (486).

**TON PER MILE RATES.**

Should decrease as haul increases. *Gottron Bros. Co. v. G. & W. R. R. Co.* 38 (45).

Fundamental maxim that rate per ton-mile shall decrease as distance increases, but to disregard rule is not of necessity a discrimination. *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (232).

As measure of rates. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (255).

While they are a factor in rate making, per ton-mile results are not necessarily controlling. *Kansas-Iowa Brick Rates*, 285 (287).

Helpful in determining the reasonableness of rates, but its value is considerably minimized in a group adjustment. *Brick Rates from Ohio Points to Huntington, W. Va.* 292 (295).

Revenue on brooms are lower from Missouri River and other points to Colorado common points than to Texas destinations equally distant and conditions of haul to Texas are more favorable than to Colorado common points. *Broom Rates to Colorado points*, 310 (311).

Discussed. *Omaha-Oklahoma Fresh-Meat Rates*, 454 (457).

Used for comparison apply in a territory where traffic conditions are different. *Id.* 454 (457).

Scrap iron. *Scrap-Iron Rates Between Duluth and Chicago*, 467 (469).

An accurate presentation must include a statement which will show the actual hauls and the average length of the hauls. *Lumber Rates Texas etc., to Oklahoma and Missouri*, 471 (475).

A high average ton-mile revenue may be due to short hauls. It has been repeatedly shown that traffic low in ton-mile earnings may, because of its farther carriage and greater density, be the most remunerative. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (535).

Ton-mile statistics, reflecting as they do neither car loading, train tonnage, nor car or train mileage, are far from being infallible guides in fixing freight rates. *Id.* 533 (535).

Claimed to be very low from Illinois to Atlantic seaboard. *Grain Rates in C. F. A. Territory*, 549 (558).

Missouri River to Abbotsford, Wis., and Chicago, Ill. *Omaha-Wisconsin Grain Rates*, 602 (604).

Iron ore, Philadelphia to Island Park, Pa. *Thomas Iron Co. v. P. R. R. Co.* 608 (609).

Fuel oil, Sugar Creek, Mo., to Omaha, Crete, and Grand Island, Nebr. *Fairmont Creamery Co. v. A. T. & S. F. Ry. Co.* 661.

Discussed. *National Syrup Co. v. C. & N. W. Ry. Co.* 673 (676).

Under proportional rates Omaha to Oklahoma. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (683, 684).

**TON RATES.**

Rates on scrap iron seem generally to be stated in cents per 100 pounds. If carrier elects to establish an equivalent rate in cents per gross ton, it may do so. *Scrap Iron Rates Between Chicago and Milwaukee*, 525 (526).

**TONNAGE.** *See also* **VOLUME OF TRAFFIC.**

Over direct routes to all Mississippi River crossings increasing. *Mississippi River Case*, 47 (55).

From 1906 to and including 1912 the average annual movement of green coffee from New Orleans to St. Louis was about 25,000 tons. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (485, 487).

Increase in volume of. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (536).

Amount of traffic tributary to various lines at Pittsburgh, Pa. *Waverly Oil Works v. P. R. R. Co.* 621 (622, 623).

To Oklahoma dependent upon corn crop. *Omaha Grain Exchange v. C. R. I. & P. Ry. Co.* 680 (686).

**TORT DAMAGES.** *See* **DAMAGES.****TRACK SCALES.**

A majority now in use should be rebuilt, and many additional should be installed. *In re Weighing of Freight by Carriers*, 7 (11).

Should be accurate within at least 100 pounds. *Id.* 7 (13).

Government should determine kind of apparatus with which track scales are to be tested, manner of testing, and frequency with which test shall be made. *Id.* 7 (33).

**TRACKAGE AGREEMENT.**

The C. & S. E., which is a plant facility of the Victor-American mines, operates by trackage agreement over lines of other carriers. The inclusion of the mines of the C. & S. E. in the ratings of the D. & R. G. and C. & S. R. R. works an undue discrimination. *Huerfano Coal Co. v. C. & S. E. R. R. Co.* 502 (507).

**TRACTIVE POWER.**

Increased tractive power of locomotives is significant as tending to reduce the operating cost per unit of freight transported. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (536).

**TRAIN EARNINGS.**

Where the commodity moves in trainloads the earnings per train-mile furnish the best criterion. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (535).

**TRAIN-MILE REVENUE.**

Larger number of passengers per train-mile more than recoups carrier for low fare per passenger per mile on excursion business. *Carnegie Board of Trade v. P. Co.* 122 (128).

**TRAIN SPEED.**

From Boston to Haverhill, Mass., via Windham, N. H., a distance of sixty-eight miles, delivery would not be made until the morning of the fifth day owing to transfer of car from train to train. *Haverhill Box Board Co. v. B. & A. R. R. Co.* 336 (337).

Time consumed in movement of coal from Ludington, Mich., to Milwaukee, Wis., from 1 to 15 days. *Becker v. P. M. R. R. Co.* 645 (653).

**TRAINLOADS.**

Hauling of coal in trainloads into Nashville appears to be the exception rather than the rule. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (536).

**TRAINLOADS—Continued.**

In ripening season trainloads move to Jacksonville and Savannah, where they are broken up, and some of them go forward via water lines and others via Atlantic Coast Despatch. These movements are referred to as "consigned routings." *R. R. Com'rs. of Fla. v. S. Exp. Co.* 634 (636).

**TRANSFER.**

Fact that transfer is necessary can not justify present difference between rates to upper and lower crossings. *Mississippi River Case*, 47 (57).

Contention that it was more expensive to transfer through business from eastern to western line than to make delivery to a consignee and again take up business from consignor not sustained. *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (231).

**TRANSIT PRIVILEGE. See also DOUBLE-SACKING; RESHIPING.**

Refund denied on unused grain "transits" shipped in under former practice of paying full rate to final destination and shipping out manufactured and by-products. *Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.* 364.

Until May 3, 1910, it was the almost universal practice of carriers to check the shipment out against the shipment in without inquiring as to the character of the product shipped out. Commission held that it was improper. 364 (365).

Complainant required to bill traffic from point of origin to point of destination denominated a transit billing point and pay into milling point the full rate from origin to billed destination. When the product went on to destination no further payment was required, the shipment being billed out on account of transit. *Id.* 364.

Checking car against car can not properly be done, since it gives to the less-than-carload shipment of the corn in, and in some cases of the product out, the carload rate. *Id.* 364 (370).

Ordinarily where milling in transit is permitted the full local rate is collected when the shipment moves into the milling point. When product moves to final destination to which through rate is in effect charges are so adjusted plus milling in transit penalty. *Id.* 364 (368).

Mills in Charleston have no milling-in-transit privilege, and can only place their products in the common territory between Wilmington and Charleston by the payment of local rates. *Boney & Harper Milling Co. v. A. C. L. R. R. Co.* 383 (385).

Barley converted into malt. *Milwaukee Maltsters' Traffic Asso. v. G. T. W. Ry. Co.* 489.

Storing at New Orleans and reshipping to destination at through rate from point of origin to ultimate destination. *Molasses Rates from Mobile*, 666 (671).

**TRANSPORTATION.**

That portion of section 1 which makes it the duty of every carrier subject to the provisions of this act to provide transportation, including cars, upon reasonable request therefor, must be read into and made a part of that portion of section 1 which deals with the matter of switch connections between common carriers and lateral branch lines of railroads. *Huerfano Coal Co. v. C. & S. El. R. R. Co.* 502 (505).

**TRANSPORTATION CONDITIONS. See also CIRCUMSTANCES AND CONDITIONS.**

When differentials are not disproportionate to differences in transportation conditions, higher rate on salt in packages than on salt in bulk not unreasonable. *Gotttron Bros. Co. v. G. & W. R. R. Co.* 38 (42).

**TON RATES.**

Rates on scrap iron seem generally to be stated in cents per 100 pounds. If carrier elects to establish an equivalent rate in cents per gross ton, it may do so. Scrap Iron Rates Between Chicago and Milwaukee, 525 (526).

**TONNAGE.** *See also* VOLUME OF TRAFFIC.

Over direct routes to all Mississippi River crossings increasing. Mississippi River Case, 47 (55).

From 1906 to and including 1912 the average annual movement of green coffee from New Orleans to St. Louis was about 25,000 tons. Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co. 484 (485, 487).

Increase in volume of. Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (536).

Amount of traffic tributary to various lines at Pittsburgh, Pa. Waverly Oil Works v. P. R. R. Co. 621 (622, 623).

To Oklahoma dependent upon corn crop. Omaha Grain Exchange v. C. R. I. & P. Ry. Co. 680 (686).

**TORT DAMAGES.** *See* DAMAGES.**TRACK SCALES.**

A majority now in use should be rebuilt, and many additional should be installed. In re Weighing of Freight by Carriers, 7 (11).

Should be accurate within at least 100 pounds. Id. 7 (13).

Government should determine kind of apparatus with which track scales are to be tested, manner of testing, and frequency with which test shall be made. Id. 7 (33).

**TRACKAGE AGREEMENT.**

The C. & S. E., which is a plant facility of the Victor-American mines, operates by trackage agreement over lines of other carriers. The inclusion of the mines of the C. & S. E. in the ratings of the D. & R. G. and C. & S. R. R. works an undue discrimination. Huerfano Coal Co. v. C. & S. E. R. R. Co. 502 (507).

**TRACTIVE POWER.**

Increased tractive power of locomotives is significant as tending to reduce the operating cost per unit of freight transported. Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (536).

**TRAIN EARNINGS.**

Where the commodity moves in trainloads the earnings per train-mile furnish the best criterion. Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (535).

**TRAIN-MILE REVENUE.**

Larger number of passengers per train-mile more than recoups carrier for low fare per passenger per mile on excursion business. Carnegie Board of Trade v. P. Co. 122 (128).

**TRAIN SPEED.**

From Boston to Haverhill, Mass., via Windham, N. H., a distance of sixty-eight miles, delivery would not be made until the morning of the fifth day owing to transfer of car from train to train. Haverhill Box Board Co. v. B. & A. R. R. Co. 336 (337).

Time consumed in movement of coal from Ludington, Mich., to Milwaukee, Wis., from 1 to 15 days. Becker v. P. M. R. R. Co. 645 (653).

**TRAINLOADS.**

Hauling of coal in trainloads into Nashville appears to be the rule rather than the rule. Traffic Bureau of Nashville v. L. & N. R. R. Co. 533 (536).

TRANSIT PRIVILEGE

Transit privilege is a privilege granted to certain commodities, such as agricultural products, to be transported at a reduced rate of freight when they are being transported from one point to another for the purpose of being sold or otherwise disposed of at a future date.

TRANSIT

For the transit is necessary to be a direct line from one point to another, and the transit privilege is not available if the goods are transported by a circuitous route. In this case, the goods were transported by a direct line from the point of origin to the point of destination, and the transit privilege was available.

TRANSIT PRIVILEGE. See also Transit Privilege, 11-1.

Refund denied on unused grain "transit" shipped from the point of origin to the point of destination and by-products. Clinton Sugar Refining Co. v. United States, 1910. It was the usual practice of the shipper to ship the grain in bulk, and the shipper was not entitled to a refund of the freight on the unused grain. The act of the product shipped was not a transit.

304 (305).  
Complainant required to pay full rate of freight on the product shipped.

full rate from origin to destination, and the complainant was not entitled to a refund of the freight on the unused grain. The act of the product shipped was not a transit.

## TRANSPORTATION CONDITIONS—Continued.

Difference in, not large enough to justify present advantage in rates that St. Louis and lower crossings have over Iowa cities on west bank of river. *Mississippi River Case*, 47 (57).

## TWO-CENT FARES.

Excursion fares withdrawn, and uniform flat rate of two cents per mile provided. *Carnegie Board of Trade v. P. Co.* 122 (125).

## TWO-FOR-ONE RULE.

Discussed. *Northwestern Woodenware Co. v. C. M. & P. S. Ry. Co.* 237 (238).

TWO-LINE HAUL. *See also* LINE HAUL.

Fact that traffic to upper crossings moves over two-line route considered in establishing rates between upper and lower crossings. *Mississippi River Case*, 47 (59).

Additional allowance for a two-line haul refused. *Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co.* 250 (264).

Low rates to depressed area involving two-line haul. *Lumber Rates Texas etc.*, to Oklahoma and Missouri, 471 (473).

Short-line distance taken for percentage rates without reference to whether it was made up of one or two independent roads. *Springfield Commercial Asso. v. P. R. R. Co.* 511 (513).

Rate from New York to Memphis not found unreasonable or unduly prejudicial as compared with rate from New York to St. Louis where carriers having direct one-line haul to St. Louis do not serve Memphis and where carriers serving Memphis reach St. Louis only by two or three line hauls. *Memphis Freight Bureau v. B. & O. R. R. Co.* 543 (547).

Arbitraries over the one-line haul prescribed in case of a two-line haul. *Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co.* 563 (567).

Short-distance haul over two or more lines meeting rate by one line longer route. *Id.* 563 (567).

Two-line haul as justification for higher rate in effect to intermediate point. *Thomas Iron Co. v. P. R. R. Co.* 606 (609).

The expense of handling traffic is greater over a two-line haul than a one-line haul and the charge paid by the public should be greater. *Waverly Oil Works v. P. R. R. Co.* 621 (631).

## UNIFORM CLASSIFICATION.

Carriers are at work upon, and Congress has matter under advisement. *Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.* 230 (234).

It would greatly lessen the confusion that now surrounds the situation, and conduce to more harmonious and satisfactory results, if the rule relative to return of empty beer packages of the western trunk lines and of the western classification were the same. *Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co.* 688 (692).

## UNIFORM STORAGE CHARGES.

Charges made uniform which in some cases resulted in increases and in other reductions. *Storage Charges in C. F. A. Territory*, 372 (375).

## UNINSURED RATES.

Mentioned. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 589 (578).

## UNION PACIFIC.

The U. P. R. R. Co. is not a land-grant deduction road. *U. S. v. U. P. R. R. Co.* 518 (520).



**UNLOADING. See also LOADING.**

No greater free time allowed to remove traffic from freight shed furnished by carrier than for unloading from car. New Orleans Storage Rules and Regulations. 605 (606).

**UNUSED TRANSIT.**

Refund denied on unused grain "transits" shipped in under former practice of paying full rate to final destination and shipping out manufactured and by-products. Clinton Sugar Refining Co. v. C. & N. W. Ry. Co. 364.

**UPPER MISSISSIPPI RIVER CROSSINGS.**

Include Keokuk, Fort Madison, Burlington, Muscatine, Davenport, Clinton, and Dubuque, Iowa. Mississippi River Case. 45 (48).

**USE.**

Rates constructed to equalize former refund on coal for steam purposes not found unjustly discriminatory. Lebanon Commercial Club v. L. & N. R. R. Co. 391 (394).

A difference in the rate according to the use to which a commodity is put has been condemned by this Commission, and the Supreme Court of the United States. Paper Rates from Manitowish and Milwaukee to Kaukauna. Wis. 305 (307).

Rates not found to be dependent upon. Milwaukee Malster's Traffic Assn. v. G. T. W. Ry. Co. 420 (422).

Objection that description of wagon wood and plow beams in the rough until it has gone through a further process of manufacturing amounts to classification not according to character but according to use. Ship Iron Store Co. v. St. L. & S. F. R. R. Co. 454 (457).

**VALUE OF COMMODITY.**

Under the law it is duty of shippers of property of more than ordinary value to bill same at its true value in order that legal rate may be applied. In re Express Rates. 122 (124).

Amount of any c. & d. bill for collection from a consignee shall be considered as declaration of value of shipment, unless greater value is declared. Id. 122 (124).

Carrier not entitled to assess charges on shipment of stocks and bonds accepted in violation of its tariff, or a per value fee in excess of actual value of the securities. Acme Portland Cement Co. v. Am. Exp. Co. 126.

Where shipper refused to state, as required by tariff, the market value of shipment of stocks and bonds, the carrier was under no obligation to transport such securities and it was its duty to refuse the shipment. Id. 126.

Market value of California champagne is about one-third that of the imported champagne. Schmidt & Powers, Inc. v. A. T. & S. F. Ry. Co. 275 (278).

Rates on liquors formerly maintained dependent upon value but withdrawn at request of shippers who objected to showing the invoice value of their shipments upon the bills of lading. Id. 274 (278).

Pipe fittings of various kinds are of greater value than iron, but this fact is of little value in this proceeding for the reason that the same commodity rates are assessed such articles and both are classified alike. New England Electric Co. v. C. R. I. & P. Ry. Co. 453 (455).

The value of an average carload of green coffee ranges from \$2,000 to \$2,500 depending upon the market price. Traffic Assn. of St. Louis Coffee Importers v. I. C. & S. F. R. Co. 494 (495).

**VALUE OF COMMODITY—Continued.**

Articles of greater value than scrap iron take lower rate. Scrap-Iron Rates Between Chicago and Milwaukee, 525.

Gluten feed and mixed feed—by-products of grain—no greater than grain products. Grain Rates in C. F. A. Territory, 549 (538, 554).

The value of first-class matter is very much in excess of fifth-class. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co. 563 (567).

Oak and hickory wagon wood and oak and hickory lumber per 1,000 feet. Sligo Iron Store Co. v. St. L. & S. F. R. R. Co. 616 (617).

Lower rates maintained from New Orleans on refined sugar, which is the most valuable product obtained from the cane, than on blackstrap, which is the residue of least value from the manufacture of sugar. Molasses Rates from Mobile, 666 (670).

Same rates maintained from New Orleans on blackstrap molasses as on all the higher grades of molasses, whether shipped in tank cars or in packages suitable for use by the retail trade. *Id.* 666 (670).

Glucose averages about 15 per cent higher in value than corn. National Syrup Co. v. C. & N. W. Ry. Co. 673 (674).

Market quotations offered to show advantage enjoyed by Omaha over Kansas City. There is no difference in the intrinsic value of like grain in the two markets and it is not within our province to adjust rates merely to equalize market conditions. Omaha Grain Exchange v. C. R. I. & P. Ry. Co. 680 (686).

**VALUE OF PROPERTIES.**

Placed upon C. & N. W. Ry. Co. west of Missouri River by Nebraska State Commission. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250 (256).

Dividing the valuation placed upon the bridge by the assessed valuation of defendant's line in Iowa and Illinois, it appears that such valuation represents the assessed value of 66½ miles of line. East Dubuque Supply Co. v. I. C. R. R. Co. 425 (427).

In the near future the commission itself will ascertain the value of terminals. Detroit Switching Charges, 494 (497).

Rental of elevator based on valuation ascertained by disinterested engineers and contractors. Omaha Grain Exchange v. A. T. & S. F. Ry. Co. 664.

Land for purpose of building tank leased by railroad at rental said to be equal to 6 per cent of the value of land so leased. Molasses Rates from Mobile, 666 (668).

**VALUE OF SERVICE.**

As measure of rate. Taylor Dry Goods Co. v. M. P. Ry. Co. 205 (212).

Storage charges not based upon. Storage Charges in C. F. A. Territory, 372 (374).

**VOLUME OF TRAFFIC. See also BULK; TONNAGE.**

Lesser cost of service on account of greater volume of business might be offset by expense of providing terminals in large cities and of operating same. Iowa State Board of R. R. Com'rs v. A. E. R. R. Co. 193 (200).

Shipper tendering carload of freight is not of necessity entitled to more favorable rate than one who tenders 100 pounds of same commodity. Taylor Dry Goods Co. v. M. P. Ry. Co. 205 (209).

That traffic is small has been recognized by Commission as reason for maintaining higher rates than where movement is greater. German Kall Works, Inc., v. A. T. & S. F. Ry. Co. 223 (224).

**VOLUME OF TRAFFIC—Continued.**

The fact that there is not and has not been for a considerable period any movement is not sufficient justification for the cancellation of the commodity rate, leaving higher rate in effect. Sandstone, Minn.—Missouri River Building Stone Rates, 269 (271).

Scrap iron. Scrap Iron Between Duluth and Chicago, 467 (468).

Greater in one direction than in the other justification for difference in rates. Hull Vehicle Co. v. S. Ry. Co. 619 (620).

Advantage of heavier loading in tank cars northbound than in box cars southbound offset by empty backhaul of tank cars while box cars may be reloaded. Marshall Oil Co. v. C. G. W. R. R. Co. 707 (708).

**VOLUNTARY RATES.**

Carrier permitted to discontinue through route voluntarily maintained for four years which embraced substantially less than the entire length of its railroad. Rates on Cotton Seed and its Products, 219 (221).

It can fairly be taken as conclusive that voluntary rates established by the carriers are as high as they should be. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250 (257).

Defendant carriers could not have been expected to establish voluntarily the rates found reasonable by this Commission. In re Advances on Livestock, 332 (334).

**VOLUNTARY REDUCTION.**

Damages denied where rate voluntarily reduced. Bryant Co. v. Ft. W. & D. C. Ry. Co. 594 (597).

**WALHALLA LINE.**

Described. Columbia Chamber of Commerce v. S. Ry. Co. 339 (343).

**WAREHOUSES.**

Storage charges advanced for the purpose of inducing shippers to remove their commodities more promptly from freight sheds, which under the present scale they were using as warehouses. New Orleans Storage Rules and Regulations, 605 (606).

**WATER.**

Haul of, for use in engines. Arizona Corporation Commission v. A. T. & S. F. Ry. Co. 428 (431).

**WATER-AND-RAIL RATES. See also OCEAN AND RAIL, RAIL AND WATER RATES.**

Bulk of traffic from eastern points to Columbia, S. C., and Augusta, Ga., moves by water and rail. Columbia Chamber of Commerce v. S. Ry. Co. 339 (341).

**WATER COMPETITION. See also COMPETITION; RAILROAD; POTENTIAL.**

Compels 10-cent rate on coarse salt in bulk from New York mines to Chicago. Gottron Bros. Co. v. G. & W. R. R. Co. 38 (42).

As defense to basing-point system of rate making. Board of Trade of Carrollton v. C. of G. Ry. Co. 154 (159).

Columbus put on Macon basis from the west to enable lines through Montgomery to meet competition of water lines to Columbus. Lagrange Chamber of Commerce v. A. & W. P. R. R. Co. 178 (183).

Ocean route controls rates to Atlanta. Atlanta Journal Co. v. S. A. L. Ry. 186 (189).

Between Atlantic seaboard and Pacific coast terminals has forced carload rate from eastern mills to Pacific coast. Taylor Dry Goods Co. v. M. P. Ry. Co. 205 (210).

## WATER COMPETITION—Continued.

Rates to Louisville vary according to the grade of coal, whereas to Lebanon one rate governs the carriage of all grades. Not found unjustly discriminatory, river and rail competition influencing rates. *Lebanon Commercial Club v. L. & N. R. R. Co.* 301 (304).

It is not necessary here to decide whether carrier can meet water competition at Augusta and refuse to meet such competition at Columbia. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (347).

Higher rates in effect from Meridian to various points between New York and Calvert than from Mobile justified by water competition. *Meridian Board of Trade & Cotton Exchange v. A. G. S. R. R. Co.* 360 (361).

Carriers established any-quantity rates on champagne because water rates were any-quantity. *Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co.* 376 (378).

Effect of on traffic from New York and Syracuse to Portland, Oreg. *Keats Auto Co. v. O.-W. R. R. & N. Co.* 412 (413).

Rates from Menominee, Mich., are controlled by water competition and rates from Minneapolis are so far affected by competition as to be fairly made when considered with reference to the Wausau rates. *Wausau Advancement Asso. v. C. & N. W. Ry. Co.* 459 (461).

The fact that because of the likelihood of water competition, a carrier makes a rate which may not be compensatory, does not of itself render unreasonable and unjust an increase to a remunerative basis. *Scrap-Iron Rates Between Duluth and Chicago*, 467 (470).

Rates to Memphis, Tenn., on coal dictated by water transportation down Mississippi River from the Pittsburgh, Pa., mines. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 533 (536).

Active on Mississippi River from St. Louis to New Orleans and Vicksburg to Shreveport. *Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co.* 569 (573).

Policy of carriers is that they regard meeting water competition as the equivalent of annihilating the river traffic. *Id.* 569 (573).

Argued by defendants that water-compelled rates via New Orleans or any of the Gulf ports to Shreveport justified lower rates from St. Louis and defined territories to Shreveport than to Texarkana. *Id.* 569 (574).

Does not warrant discrimination against point not favored by. *Id.* 569 (581, 582).

While carriers may properly meet water competition, the maintenance of a lower rate to one point than to other points which are intermediate can not be justified on the ground that it is necessary to suppress water competition. *Id.* 569 (583).

## WATER TRANSPORTATION.

Transportation by river, however, was not the basis upon which class rates from the east were equalized to Columbia and Augusta; the real basis was the relatively equal rail distances of these cities from Charleston and Savannah. *Columbia Chamber of Commerce v. S. Ry. Co.* 339 (347).

None on coffee or sugar from New Orleans to St. Louis for about 10 years, except for a very short period during the year 1911. *Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co.* 484 (485).

## WAYBILLS.

Former order amended so as to require attachment of waybill and label therein prescribed to only one package in a shipment of two or more packages of perishable property. *In re Express Rates*, 132 (136).

Traffic in the Southeast is handled largely on card waybills. *Ludowici-Celadon Co. v. A. C. L. R. R. Co.* 693 (695).

**WEAK LINE.**

Pierre, Rapid City & Northwestern Ry. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co. 250 (256).

**WEIGHING BUREAUS.**

Railroads generally have. In re Weighing of Freight by Carriers, 7 (27).

Representatives of, may examine books and records of shippers, Id. 7 (28).

**WEIGHING CHARGE.**

Charge of 50 cents per car where cars are switching to private scales for weighing unless weights so ascertained were used for the assessment of freight charges not found to be unlawful. American Brake Shoe & Foundry Co. v. B. Ry. of C. 350.

**WEIGHMASTER.**

Should be representative of public authority. In re Weighing of Freight by Carriers, 7 (34).

**WEIGHT. See also ACTUAL; ESTIMATED WEIGHT.**

Inaccuracies in weighing result in the imposition of unreasonable charges and in discrimination between shippers just as really as do differences in the freight rate itself. In re Weighing of Freight by Carriers, 7 (10).

Of grain, coal, and lumber, discussed. Id. 7 (21, 24, 26).

Automatic and mechanical self-registering scales, discussed. Id. 7 (17).

Cars should never be weighed in motion coupled at both ends, and ordinarily not when coupled at one end. Id. 7 (17).

Accuracy in matter of, becomes important in proportion to value of article. Id. 7 (29).

Carrier may not provide that weight of a particular scale shall govern. Id. 7 (30).

If original weight was improper, shipper ought not to be required to pay for reweighing. Id. 7 (30).

To assess freight charges upon any other than actual weight is to impose rate either too high or too low and to discriminate between different shippers. Id. 7 (30).

Of car varies from week to week according to climatic conditions. Id. 7 (34).

Every carload of freight, where track scales are relied upon to determine weight upon which freight charges are to be assessed, should be weighed within 50 miles of the point of origin ordinarily. Id. 7 (36).

Western wool weighs more than eastern wool. Massachusetts-Maine Wool Rates, 396 (397).

Aggregate weight of 1,027 hewn oak ties, 179,300 pounds. Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co. 701.

**WHARVES.**

Maintained by carriers at Fort Myers, Fla., for use of business from boat line on Caloosahatchee River. R. R. Com'rs. of Fla. v. A. C. L. R. R. Co. 356 (358).

Damages awarded for failure of complainant to receive equal wharfage facilities at Galveston, Tex. Eichenberg v. S. P. Co. 584.

**ZONE RATES.**

Mentioned. Mississippi River Case, 47 (51).

Iowa should be divided into five zones as to traffic to Utah and Colorado common points, and rates from each zone should be constructed by adding to the Missouri River rate a fifth of the total spread now existing in rates between Missouri and Mississippi rivers. Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co. 193 (200) ; 563 (564).





